Public Utilities

FORTNIGHTLY

September 2, 1943

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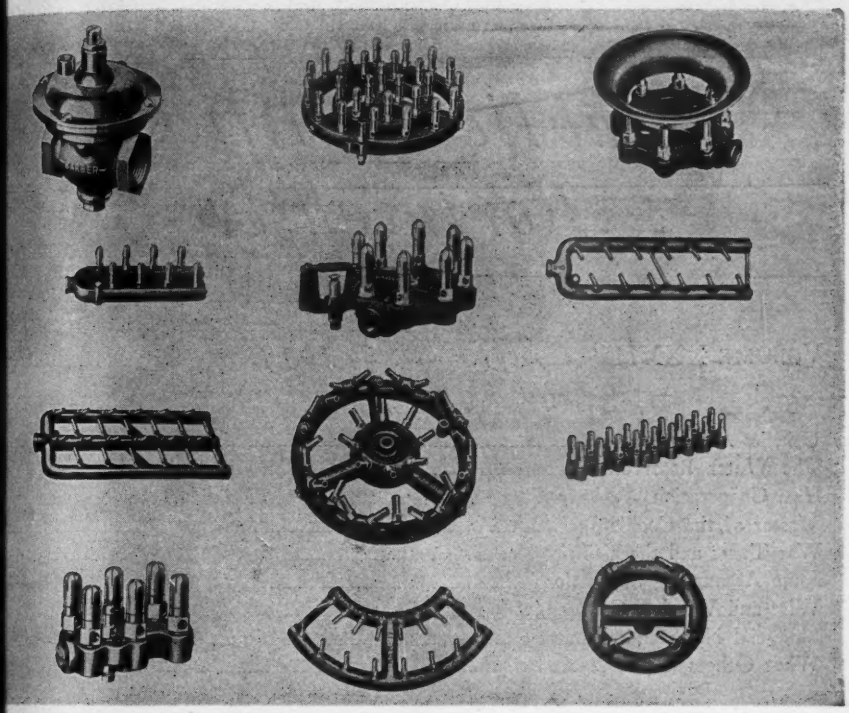

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Public Utilities Fortnightly

VOLUME XXXII *September 2, 1943* NUMBER 5

Contents of previous issues of PUBLIC UTILITIES FORTNIGHTLY *can be found by consulting the "Industrial Arts Index" in your library.*

¶ *This magazine is an open forum for the free expression of opinion concerning public utility regulation and allied topics. It is supported by subscription and advertising revenue; it is not the mouthpiece of any group or faction; it is not under the editorial supervision of, nor does it bear the endorsement of, any organization or association. The editors do not assume responsibility for the opinions expressed by its contributors.*

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Pages with the Editors

THERE should be glory enough to go around and every industry is entitled to its niche of credit in the forthcoming victory of the United Nations. But when the laurel leaves are handed out we know that history will record quite clearly the important part played by the various communications industries in the war effort.

LEST that seems like crowing a little bit too soon, let us hasten to remark that there is much yet to be done before we get to that happy day when we can relax and hand out the prizes. Yet when we make the inevitable comparison between the parts played by communications industries in World War I with World War II, we are struck by the increasing importance of the spoken word and the given signal in the technique of modern warfare.

THE most sensational development, of course, is the entire radio industry, which was little more than an incoherent infant during the first World War. In the naval battle of Jutland, signal flags and blinker lights were among the principal means of communication because of the limitations on radio transmission in that day. Today we have the walkie-talkie, the coördinated conversation between the radio equipment in today's mobile artillery and its umbrella airplane protection.

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PAUL A. WALKER

A utility industry cannot flourish without unified regulatory supervision.

(SEE PAGE 267)

RADAR, that miraculous offshoot of radio, is the foundation of antiaircraft defense. And the telephone industry, which did such great work in World War I, is doing much greater and varied work today. Land lines, which were recently strung between allied divisions in the fight around Mt. Etna in Sicily, have resulted in precise coördination which would not have been possible if our forces had to depend on open air radio.

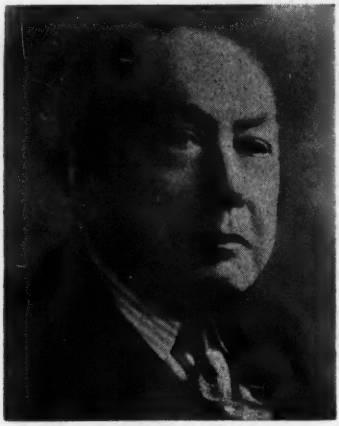
YES, an army may travel on its stomach, as Napoleon said, and it may succeed or fail in proportion to its "eyesight" or intelligence, as Von Clausewitz remarked, but its power to move at all, whether on its belly or its eyeballs, depends on the coördination of its nerve centers. And that in turn means communications lines promptly established, adequately maintained, and efficiently operated.

ALL of which heads up to the somewhat patent fact that back of the Army with its Signal Corps and the Navy with its Naval Intelligence stand the technique and resources of the American communications industry, telephone, telegraph, and radio, both in manufacturing and the operating utility phases. Because American communications are the best in time of peace, it could not help but follow that our armed forces are correspondingly supplied with the best of communications in time of war, and that alone can mean the margin between victory and defeat or between swift victory or a delayed and costly one.

BUT back of the communications industries stands another group to whom much credit must go for its intelligent supervision of regulation, Federal and state commissions. If it were not for a system of able and understanding regulation in the United States, it is doubtful if the American communications industries could ever have arrived at their present state of excellence.

LACK of such regulatory supervision might well have resulted in monopoly or abuse or inertia, which have characterized the communications art in so many foreign countries. Lack of uniform regulation might have resulted in confusion or even in public ownership by de-

Reprinted from the HOUSTON PRESS, July 7, 1943.



HERBERT COREY

What is all the shooting about in the REA set-up?

(SEE PAGE 275)

fault, which has also been the unhappy result in the foreign communications art all too often.

AND between the Federal and state regulatory commissions there must of necessity be coördination and understanding. There is no doubt that the leading exponent and most diligent practitioner of coöperation between Federal and state commissions in the coördination of regulatory action in the United States today is PAUL A. WALKER, member of the Federal Communications Commission. COMMISSIONER WALKER's article on such coöperation in the communications field is the leading feature in this issue.

MR. WALKER was born in Pennsylvania in 1881 and following primary education in that state graduated from the University of Chicago (PhB, '09) and the University of Oklahoma (LLB, '12). Following several years of teaching experience as principal of the Shawnee, Oklahoma, high school, and instructor on the faculty of the University of Oklahoma, he went into legal practice in 1912 and was appointed counsel of the Oklahoma Corporation Commission in 1915. Thereafter for fifteen years he was identified with the Oklahoma commission, succeeding to the posts of associate member and chairman, respectively.

HIS record as an active regulator attracted the attention of President Roosevelt, who appointed him to the Federal Communications Commission upon the establishment of that body in 1934. He was reappointed in 1939 for a term of seven years. COMMISSIONER WALKER has always been active in the affairs of the National Association of Railroad and Utilities Commissioners, first as a state and later as a Federal commissioner.

WE welcome a new contributor to this issue with the publication of the article on accounting by H. O. LETIECQ (beginning page 287). MR. LETIECQ is a certified public accountant in New York state and formerly was associated with Arthur Andersen & Company and Barrow, Wade, Guthrie & Company. He is now on the accounting staff of the New York Public Service Commission, in charge of field examination.

CHAIRMAN R. W. PETERSON of the Wisconsin Public Service Commission, whose article on war taxes and the utilities begins on page 281, is a native of the little city of Berlin in Green Lake county, Wisconsin, where he was district attorney and later a representative to the state legislature. He became Republican floor leader in the Wisconsin legislature prior to his appointment to the commission in 1931.

OUR attention has been called to a reference made in this department in our issue of August 19th which evidently gave the impression that we were condemning, at this late date, the Federal Trade Commission's long investigation of the utilities as being one-sided and unfair. Editorially, we intended to give no such impression but were merely trying to make the point that quasi legislative investigations, whether by the FTC or the FCC, or a committee of Congress itself, are not bound by the same rules of procedure, evidence, and due process as obtain in the regular judicial proceedings. Only this and nothing more!

AMONG the important decisions preprinted from *Public Utilities Reports* in the back of this number, may be found the following:

A RATE increase during war time was held to be contrary to public interest in a case before the Kentucky commission. (See page 129.)

NOTICE requirements as a condition precedent to the discontinuance of service for misappropriation of current, either by tampering with the meter or by other means, are discussed and ruled upon by the appellate division of the New York Supreme Court. (See page 138.)

THE United States Supreme Court discusses the meaning and scope of an order of the Interstate Commerce Commission authorizing a nation-wide increase in railroad passenger rates, and rules upon the effect of such action on intrastate commutation rates. (See page 140.)

THE next number of this magazine will be out September 16th.

The Editors

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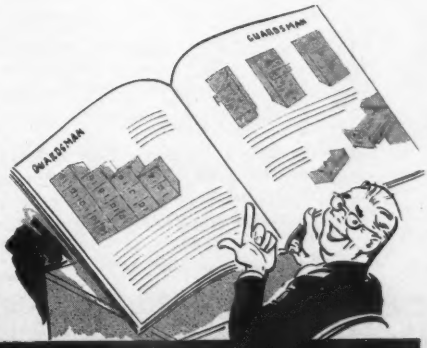


SYSTEMS DIVISION **Remington Rand Inc.** BUFFALO 3 NEW YORK

In This Issue

In Feature Articles

In Financial News

In What Others Think

In The March of Events

In The Latest Utility Rulings

PREPRINTS FROM PUBLIC UTILITIES REPORTS

Various regulatory rulings by courts and commissions reported in full text, pages 129–192, from 49 PUR(NS)

Remarkable Remarks

"There never was in the world two opinions alike."
—MONTAIGNE

ALFRED M. LANDON
Former governor of Kansas.

"A basic fault of our foreign policy is our hallelujah approach."

WILLIAM P. O'NEIL
President, General Tire & Rubber Company.

". . . plans must be made now to protect the small businessman from overregulation. He must be assured that after he builds a business he will be allowed the necessary freedom to operate it."

JOHN W. BRICKER
Governor of Ohio.

". . . we must recapture the spirit of private enterprise. . . . Related to this need is the necessity for the return of much government property when the war is won to private ownership and private management."

EDITORIAL STATEMENT
The Wall Street Journal.

"No phrase is more familiar to the public eardrums than is 'the public interest.' From time immemorial it has been the rock upon which every proposer of every reform has taken his stand, and the one principle to which he has appealed in support of his proposal."

ROANE WARING
National commander, American Legion.

"These groups [theorists and social reformers] do not even agree among themselves as to just what type of government they want. The only thing that they can agree upon is that the ideals and doctrines handed down to us by our forefathers are outmoded and should be swept aside."

ERIC A. JOHNSTON
President, U. S. Chamber of Commerce.

"All economists agree that we have never produced enough in the United States to provide a decent minimum standard of living under modern conditions for all of the people of the country. That will provide employment and will cure mass unemployment in the nation for decades to come. We have mastered the art of mass production. We must now master the art of mass distribution."

JOSEPH H. BALL
U. S. Senator from Minnesota.

"The most tragic thing that could happen after this war would be for the President to collaborate in working out a peace settlement which the Senate subsequently refused to ratify. The home front is in bad shape today because Congress and the President have not so far been able to agree on several basic domestic policies. How much more tragic if the same sort of disagreement should wreck our chances of a lasting peace."

JOSEPH W. MARTIN, JR.
U. S. Representative from Massachusetts.

"If we permit the ruin of the small business structure of this nation, some form of state socialism will rule all business."

From brief of Western Kentucky Gas Company before the Kentucky commission.

". . . for the OPA to be concerned about the slight [gas rate] increase requested (although not concerned enough to intervene and investigate the facts), and then to permit the cost of living to increase as everybody knows it has, is straining at a gnat and swallowing a camel. The commission knows judicially that the OPA has not prevented an increase in the cost of living."

EDWARD MARTIN
Governor of Pennsylvania.

"We protest, but we do not act. We see government becoming the greatest employer, the greatest buyer of goods, the greatest borrower, and at the same time the greatest lender. We see it lending enormous sums of our money. We see it in every form of business, and yet we know government is not successful in business. In America, government was not intended to enter business."

WILFRED SYKES
President, Inland Steel Company.

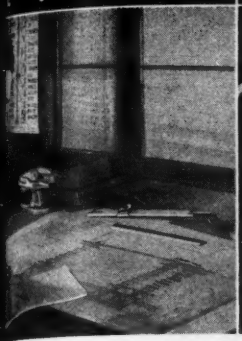
"We believe that the future of free enterprise does not rest entirely in the hands of national committees, even our own, but in the regional membership which can be induced to plan, each industry coöperating with other industries locally and with their communities. Any piece of national planning can be given meaning only by the discussion which makes it regional and the application to which it comes regionally. We believe the practical answers can come from nowhere else."

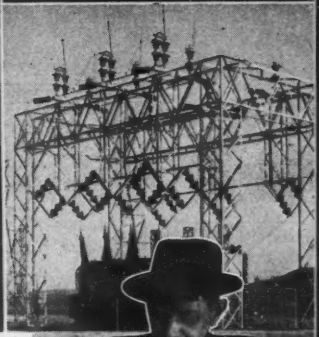
EMIL SCHRAM
President, New York Stock Exchange.

"The vested interests today are not the banking community and the industrialists as of yore but the pressure groups. . . . If we had to regulate the railroads with an Interstate Commerce Commission, the trust with a Federal Trade Commission, the utilities with a Federal Power Commission, the financial markets with a Securities and Exchange Commission, the communications systems and our aeronautical lines through Federal commissions, it is just as necessary that we control selfish pressure groups today."

EDITORIAL STATEMENT
The New York Times.

"Soon or late, if increasing chaos is to be avoided, the administration must admit clearly and unequivocally that workers and union leaders do not become saints merely because of their economic position, but can transgress individually or as groups against the public welfare just as much as individuals and groups in other walks of life. The overwhelming mass of workers, law-abiding and patriotic, recognize this. They know that when racketeers, extremists, and tin-horn Napoleons inside the labor movement are not brought to immediate accounting for antisocial action, it brings discredit upon the whole labor movement."





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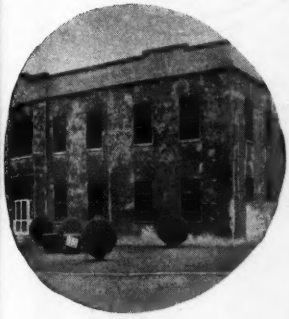

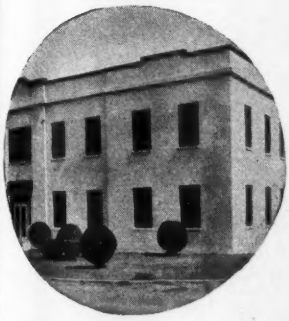

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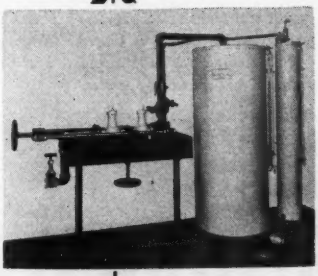

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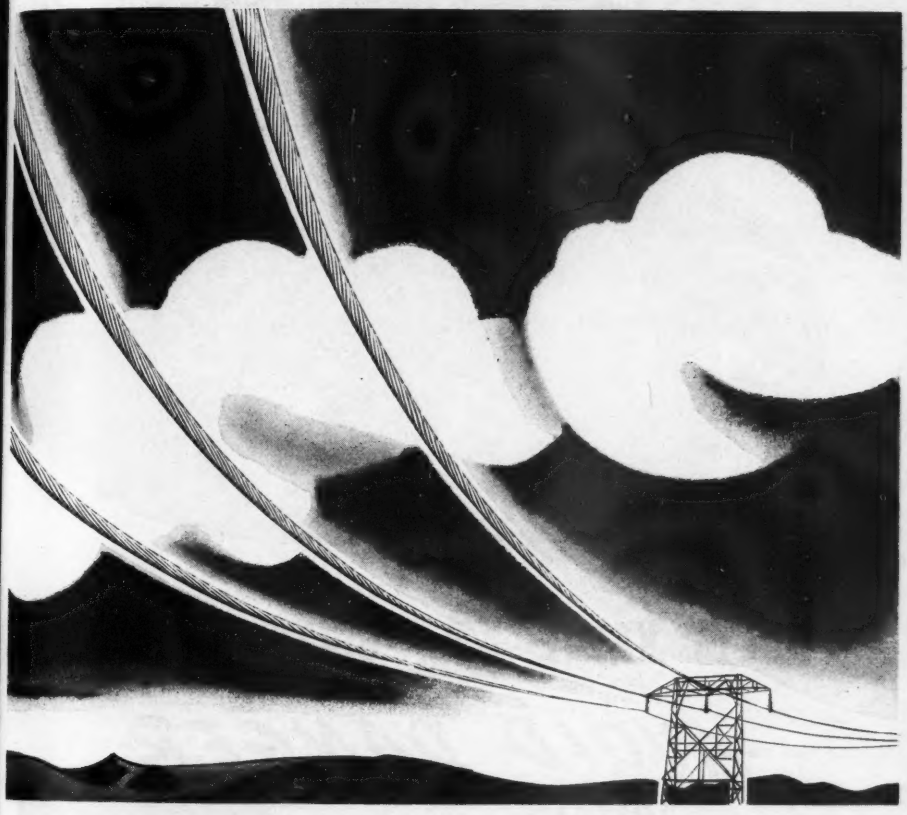

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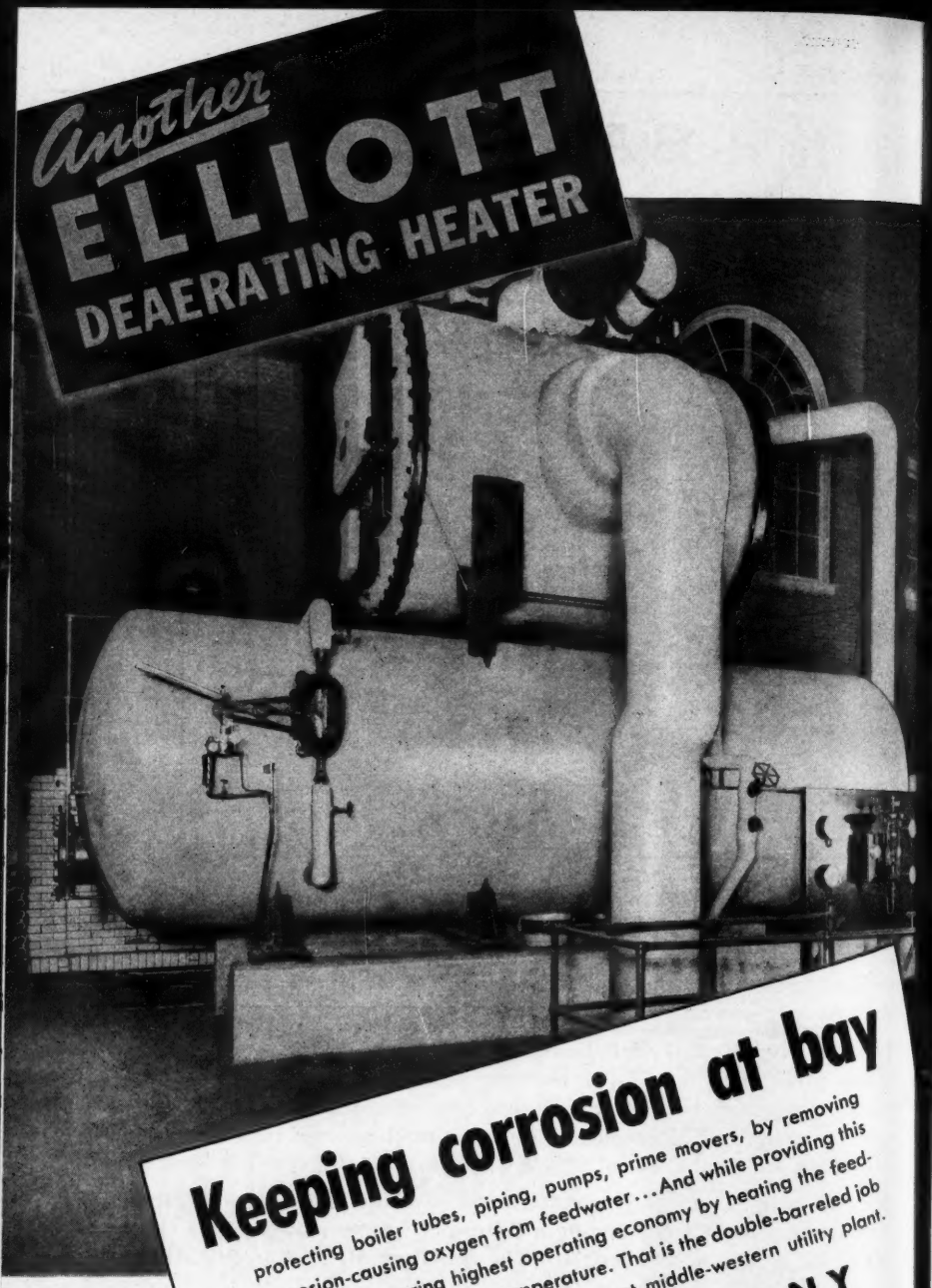

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Utilities Almanack

Due to war-time travel restriction, conventions listed are subject to cancellation.

SEPTEMBER

2	T^h	¶ *American Institute of Electrical Engineers starts national technical meeting, Salt Lake City, Utah, 1943.*
3	F	¶ *Pacific Coast Gas Association will convene, Los Angeles, Cal., Sept. 22, 23, 1943.*
4	S^a	¶ *Pennsylvania Electric Association will hold annual meeting, Pittsburgh, Pa., Sept. 23, 1943.*
5	S	¶ *International Municipal Signal Association will hold war conference, Cleveland, Ohio, Sept. 27–29, 1943.*
6	M	¶ *American Society of Mechanical Engineers and Engineering Institute of Canada will hold joint conference, Toronto, Ont., Canada, Sept. 30–Oct 2, 1943.*
7	T^u	¶ *National Safety Council will hold congress and exposition, Chicago, Ill., Oct. 5–7, 1943.*
8	W	¶ *National Electrical Contractors Association will convene, Chicago, Ill., Oct. 10, 11, 1943.*
9	T^h	¶ *American Gas Association will convene, St. Louis, Mo., Oct. 11–13, 1943.*
10	F	¶ *American Water Works Association, Missouri Valley Section, will hold meeting, Des Moines, Iowa, Oct. 12–15, 1943.*
11	S^a	¶ *Electrochemical Society will hold fall meeting, New York, N. Y., Oct. 13–16, 1943.*
12	S	¶ *National Metal Congress will be held, Chicago, Ill., Oct. 18–22, 1943.*
13	M	¶ *International Association of Electrical Inspectors, Western Section, starts session, Chicago, Ill., 1943.*
14	T^u	¶ *National Association of Railroad and Utilities Commissioners starts war conference, Chicago, Ill., 1943.*
15	W	¶ *Municipal Electric Utilities Association of New York convenes, Lake Placid, N. Y., 1943.*

A mural by Ezra Winter, reproduced by courtesy of Bank of the Manhattan Company

Here is portrayed the water reservoir of the Manhattan Company, New York's first public utility. The figure of Oceanus, adopted as a symbol in the original seal of the Manhattan Company, appears over the reservoir.

Public Utilities
FORTNIGHTLY

VOL. XXXII; No. 5 SEPTEMBER 2, 1943

How Coöperation Works In Communications Regulation

The author, one of the earliest advocates of coöperation between regulatory authorities, shows how that activity has grown and evaluates its results from actual experience in proceedings before the FCC.

BY PAUL A. WALKER
MEMBER, FEDERAL COMMUNICATIONS COMMISSION

IN previous discussions the writer has suggested how congressional action and judicial decision in the early twenties opened the door for coöperation between Federal and state commissions, the need for which had long been recognized by utility regulatory agencies.[1]

As chairman of the Committee on Coöperation between Federal and State Commissions of the National Association of Railroad and Utilities Commissioners from 1925 to 1934, he was in a position to see the steady growth of coöperative action and evaluate its results. It became an accepted fact during those years that the best regulation of a vital industry such as the railroads could not be achieved with Federal and state commissions acting independently. The modern mercuries, telephone, telegraph, and radio, with a labyrinth of communication networks stretching to every part of the United States, had

become increasingly vital to the life of the nation. It was natural, therefore, that Congress should make specific provision for coöperative procedure in the Communications Act of 1934.

From the very beginning, the Federal Communications Commission has attempted to work with state regulatory agencies where matters of mutual concern were involved. Only three weeks after its organization, an invitation was sent to the state commissions asking them to assist in the formulation of telephone accounting rules and regulations. The response was gratifying. Conferences were held and a system worked out which was mutually agreeable. When the telephone companies tried to defeat the accounting orders by resort to the Federal courts, they were challenged by legal representatives of the nation and states. The Attorney General of the United States, counsel for the public service commission of New York, and general solicitor and assistant general solicitor of the National Association of Railroad and Utilities Commissioners, and attorneys of the FCC appeared in support of the orders. It is noteworthy that in the decision of the Federal District Court reference was made to the fact that forty-six state commissions endorsed the proposed requirements.[2]

As the writer pointed out in a speech to the National Association in 1938, "unity in accounting rules and requirements was effected, and the basis laid for an actual, rather than a fictitious, valuation of telephone properties for rate-making and taxation purposes. The principles concerned were far more important than any mere accounting rules. . . . This decision . . . provided a precedent for other commissions, state and Federal, to prescribe similar regulations for other utilities, including transportation, power, and natural gas."[3]

On March 15, 1935, the President approved Joint Resolution No. 8 of the 74th Congress authorizing the FCC to investigate the telephone companies engaged in interstate commerce.[4] The fact that the American Telephone and Telegraph Company alone had gross assets of over $5,000,000,000 constituting the largest aggregation of capital and resources ever controlled by a single business, with nearly 14,000,000 telephones, more than 80,000,000 miles of wire, and close to 250,000 employees, suggests the magnitude of the task.[5]

Unfortunately, limitations of time and finance made it impracticable to have state commissioners sit with Federal authorities in the hearings of the investigation, but in other ways coöperation was possible and effective. From the very beginning, reports on the proceedings were made available to the various state commissions. These reports were used to good advantage by the states, as, for example, in their consideration of the hand-set charge and its ultimate elimination. Later, through the rate and research division of the Federal commission, important data bearing directly on rate regulatory problems were compiled and distributed. Through the loan of staff members or by supplying research data, or both, the Federal commission rendered valuable and vital service to the states in their investigation of telephone rates.

ANOTHER example of united action was in connection with the application of telegraph companies in 1937 for an increase in their interstate rates for domestic messages over land lines and by radiotelegraph.[6] The Federal commission invited the National Association of Railroad and Utilities Commissioners to appoint a coöperating committee to sit in the case. Such committee was chosen and participated jointly in the hearings and conferences which followed. The decision therein was concurred in by both Federal and state commissioners.

A direct outgrowth of coöperation in this case was a permanent plan of procedure formulated by the association and approved by the FCC, October 25, 1938.[7] This agreement in part provided that "whenever a proceeding shall be instituted before any commission, Federal or state, in which another commission is believed to be interested, notice should be promptly given each such interested commission by the commission before which the proceeding has been instituted."[8] It has served as a basis and guide for numerous coöperative undertakings in recent years.

The Pacific Telephone & Telegraph Company Case of 1940 is a good example of such coöperation.[9] A complaint was filed with the FCC charging that interstate telephone rates in the Pacific Telephone & Telegraph area were unreasonable and discriminatory. In the investigation which followed, representatives of five state commissions sat with the presiding commissioners in the hearings, and were kept advised on all discussions pertaining to the development and final disposition of the case. They also participated in the final decision.

IN 1941 the FCC issued an order for the investigation of rates of the Long Lines Department of the American Telephone and Telegraph Company. State commissions were invited to participate; but prior to the hearings the FCC, through conferences with the company, effected reductions in various toll rates amounting to more than $14,000,000 a year. At the same time, the commission announced that it would "continue studies pertinent to the rate base and the cost of furnishing telephone service, and related subjects, including methods of separation.[10]

A special committee of state commissioners was then appointed by the National Association to work with the Federal commission in telephone regulatory matters of mutual concern. This committee included Robert A. Nixon of Wisconsin, chairman; John J. Murphy, South Dakota; Frederick G. Hamley, Washington; Leon Jourol-

¶ "FROM *the very beginning, the Federal Communications Commission has attempted to work with state regulatory agencies where matters of mutual concern were involved. Only three weeks after its organization, an invitation was sent to the state commissions asking them to assist in the formulation of telephone accounting rules and regulations. The response was gratifying. Conferences were held and a system worked out which was mutually agreeable.*"

mon, Jr., Tennessee; and Richard J. Beamish, Pennsylvania. Later Mr. Nixon resigned to accept a position with the Office of Price Administration. Mr. Jourolmon was then made chairman of the committee and Crawford Jamieson of New Jersey was appointed to fill the vacancy left by Mr. Nixon's resignation.[11]

THE FCC was glad to coöperate with these able state authorities. Conferences with them as well as with other representatives of state commissions were held and exhaustive studies were made through a joint staff committee composed of representatives of the Federal and state commissions, resulting in a report on procedures for separating property, revenues, and expenses among exchange, state, and interstate toll services.

Shortly thereafter, the commission instituted an investigation to determine, among other things (1) whether the report should be adopted as a basis for future separation studies, (2) whether rates should be determined on a board-to-board or station-to-station basis.[12] Hearings were held in Chicago, the coöperating committee was present at all sessions, and other state commissioners, including Chairman Milo R. Maltbie of the public service commission of New York, participated. All were given opportunity to offer facts and points of view which might help in working out effective separation procedures, or in reaching proper conclusions on the "board-to-board *versus* station-to-station" question.

ONE important, though not immediate and direct, result of this proceeding was the subsequent filing of tariffs on a "station-to-station" basis by the Bell system, thereby effecting increased allocations of message toll revenues to the exchanges.[13]

In its report to the National Association of Railroad and Utilities Commissioners last year, the committee of five said:

> We wish to repeat the expression of appreciation of the coöperation of the Federal Communications Commission in connection with the investigation instituted by that commission under its coöperative procedure. It is absolutely essential to effective regulation of the telephone industry that there be effective coöperation between state and Federal commissioners. We believe that the results of the coöperative efforts now in progress will make regulation of the telephone industry much more expeditious . . .[14]

The writer feels that the coöperative studies are well under way, but there still remains much work to be done. As suggested by the committee, the matters of depreciation practices, rate of return, original cost, Western Electric prices, pension costs, and license contracts require further study. The Bell system license contracts are now the subject of such coöperative study.

Continued coöperative research along these lines is imperative if regulation of the telephone industry is to be improved and the greatest public interest served.

ANOTHER important case which has engaged the attention of the FCC for the past year is that relating to certain accounting practices of the New York Telephone Company.[15] Proceedings were instituted in June, 1942, and the following month the commission entered upon joint hearings with the New York Public Service Commission, which had started a similar investigation. These joint hearings

Studies in Coöperation with State Commissioners

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were continued intermittently until December 10th of last year.

As a result of this coöperative undertaking, the Federal commission has issued a proposed report which, if adopted, would require the New York Telephone Company to charge $4,166,510.57 to Account 413, "Miscellaneous Debits to Surplus." Oral argument on the case has been scheduled for September 22nd, and further conferences between the commissions will precede final announcement of decisions.

On January 20th of this year, the FCC announced that the American Telephone and Telegraph Company had agreed to a reduction in its annual Long Lines revenues estimated to amount to $50,700,000. Of this sum, $31,400,000 represented immediate savings to the public, $17,500,000 increased payment to the associated Bell companies, and $1,800,000 increased payments to the so-called "independent connecting carriers." Furthermore, rate reductions agreed upon applicable to interstate business furnished exclusively by the associated companies, or jointly with their connecting carriers, were estimated to result in an additional immediate saving to the public of approximately $3,300,000.

In 1943 the classes of telephone service to which the reduced rates are applicable have increased substantially in volume over the level during the latter part of 1942, so that the annual saving to the telephone users is now considerably greater than the above-mentioned estimates.

This settlement with the American Telephone and Telegraph Company was the result of an investigation instituted by the FCC on November 20, 1942, in its Docket 6468, in which state commissions participated.[10] The state

committee, appointed by the National Association of Railroad and Utilities Commissioners, included Leon Jourolmon, Tennessee, chairman; Richard Sachse, California; Crawford Jamieson, New Jersey; and Walter R. McDonald, Georgia. Hearings on the case were started December 16, 1942, with the coöperating committee in attendance. Intervention by the state commissions of Arkansas and nine southeastern states was allowed. After adjournment of the initial hearings, the American Telephone and Telegraph Company made the following proposals in lieu of further proceedings:

(1) Reduce private line charges and charges for overtime on message toll rates to the amount of about $35,000,000;

(2) Increase prorates and commissions to the associate and connecting companies as mentioned above;

(3) Adopt the station-to-station principle for the statement of interstate toll rates, which would provide additional compensation to the associated companies on Long Lines interstate traffic.[17]

AFTER a number of conferences between the Federal and state representatives, the FCC announced that the proposals would be accepted. It was also announced that a further study would be made of divisions between the American Company and the associated companies and of the effect of the new separation.

Under the coöperative plan, this study is progressing. The FCC has been called upon for assistance by the state organizations. Unfortunately, due to war conditions and a too limited personnel, it has not always been possible to comply with the state commission requests. Aid is being extended, however, and some worth-while results are being obtained.

An immediate and significant effect of these hearings and investigations was that the American Telephone and Telegraph Company filed its tariffs on a station-to-station rather than board-to-board basis. This was done notwithstanding the fact that the company throughout the years had strongly supported the latter policy and particularly so in the Chicago hearings.[18]

THE Committee of Coöperating State Commissioners concluded its report, dated January 21, 1943, on this proceeding with the following statement:

> While this committee has not achieved all that it set out to accomplish, we do desire to acknowledge the painstaking effort of the FCC commissioners to coöperate fully with us in considering the settlement proposed by the Bell system.[19]

Leon Jourolmon, chairman of the Coöperating Committee, wrote:

> I wish to acknowledge the courtesies extended to me personally and to the Committee of the Coöperating State Commissioners in Docket 6468, investigation of American Telephone and Telegraph Company rates and charges.
>
> . . . I have felt that the service which is rendered to the nation by the Federal Communications Commission is an outstanding one which entitles it to the support and confidence of all those who are interested in maintaining the integrity of the regulatory procedures in our society.[20]

An important current proceeding is that relating to special charges, in addition to the filed tariff rates, for interstate and foreign telephone service at hotels, apartment houses, and clubs within the District of Columbia. The purpose of this proceeding, as set forth in the original order, was to determine (1) whether all or any of these special

charges are within the jurisdiction of the commission; and (2) what tariffs, if any, should be filed with the commission showing all or any of such charges.[21]

THE case was begun in January of last year, and the public utilities commission of the District of Columbia was asked to participate coöperatively. Thereupon, the District commission instituted a proceeding of its own, putting in issue these special charges where they related to telephone service within the jurisdiction of the District commission. The Federal case was assigned for hearing and report to Commissioners Walker and Wakefield. Commissioners Hankin and Flanagan sat for the District commission.

On May 18th, the FCC released two reports in its Docket No. 6255 pertaining to the case. The first relates to the question whether the Federal commission has jurisdiction over these special charges collected on calls between telephones in the District and those outside the so-called "Washington metropolitan area." The second report is concerned with surcharges collected for telephone calls between telephones in the District and those outside, but within the "Washington metropolitan area," which area, for administrative purposes, has been divided by the telephone company into zones, of which the District is one. In many instances, an additional "interzone" charge is made for a call from a telephone in one zone to one in another zone, as, for example, in the case of a telephone call from the District to Falls Church, Virginia, or Rockville, Maryland.

THE District commission has issued tentative findings, and will participate coöperatively in the final decision following oral argument now set for September 9th. The case is of national significance. The National Association of Railroad and Utilities Commissioners and several state organizations have been allowed to intervene, have filed briefs, and will present arguments at the September 9th hearing.

Another joint proceeding now in progress is the application of the Western Union Telegraph Company and the Postal Telegraph Company for an order authorizing a merger.[22] The first public hearings on this case were begun in Washington, D. C., July 7th and 8th and are continuing from time to time. A special coöperat-

¶ "UNDER *the coöperative plan, this [AT&T-associated division] study is progressing. The FCC has been called upon for assistance by the state organizations. Unfortunately, due to war conditions and a too limited personnel, it has not always been possible to comply with the state commission requests. Aid is being extended, however, and some worth-while results are being obtained. An immediate and significant effect of these hearings and investigations was that the American Telephone and Telegraph Company filed its tariffs on a station-to-station rather than board-to-board basis.*"

ing committee appointed by the National Association is sitting with the Federal commission in the hearings.

While no attempt has been made to mention all the cases in which Federal and state commissions have worked together successfully, the ones discussed, I believe, are sufficient to demonstrate the scope of coöperation. With the nation at war, it is particularly important that reciprocal relations be maintained. The quality, quantity, and price of utility service are matters vitally related to the war program.

The 1943 War Conference of the National Association of Railroad and Utilities Commissioners to be held in Chicago in September will have as its main theme, "War-time Regulatory Problems." At that meeting, Federal and state commissioners have been invited to discuss means by which regulation of utilities can be made to contribute more fully to the winning of the war. This conference no doubt will point the way to new fields of coöperative action.

The magnitude and complexity of the regulatory problems which lie ahead call for unity of purpose and action among all regulatory bodies. Coöperation is the keyword.

Footnotes

[1] See PUBLIC UTILITIES REPORTS FORTNIGHTLY, October 4. 1928, pp. 11-19.

Also see *Proceedings of the Fiftieth Annual Convention,* National Association of Railroad and Utilities Commissioners, 1938, pp. 141-154.

[2] American Teleph. & Teleg. Co. *v.* United States (1936), 14 F Supp 121, 124, 15 PUR (NS) 413.

[3] *Proceedings of the Fiftieth Annual Convention,* National Association of Railroad and Utilities Commissioners, 1938, p. 148.

[4] *Public Resolution No. 8, 74th Congress* (49 Stat 43) effective March 15, 1935.

[5] *Report of the Federal Communications Commission on the Investigation of the Telephone Industry in the United States Made Pursuant to Public Resolution No. 8, 74th Congress,* pp. 38-51.

[6] Federal Communications Commission Reports, Vol. 5, p. 524, April 26, 1938, Docket No. 4995, 24 PUR(NS) 242.

[7] *Proceedings of the Fiftieth Annual Convention,* National Association of Railroad and Utilities Commissioners, 1938, p. 228.

[8] *Ibid.*

[9] Washington Department of Public Service *v.* Pacific Teleph. & Teleg. Co. Federal Communications Commission Docket 5681, 37 PUR(NS) 129.

[10] In the Matter of Rates, Charges, Classifications, Regulations, and Practices of the Long Lines Department of the American Telephone and Telegraph Company, Federal Communications Commission Docket 6053.

[11] *Proceedings of the Fifty-fourth Annual Convention,* National Association of Railroad and Utilities Commissioners, 1942, pp. 166, 168.

[12] In the Matter of Methods of Separating Telephone Property, Revenues, and Expenses, Federal Communications Commission Docket 6328.

[13] In the Matter of American Telephone and Telegraph Company, Rates and Charges for Communication Services Furnished by Its Long Lines Department, Federal Communications Commission Docket 6468.

[14] *Proceedings of the Fifty-fourth Annual Convention,* National Association of Railroad and Utilities Commissioners, 1942, pp. 166, 173.

[15] In the Matter of New York Telephone Company Accounting, Federal Communications Commission Docket 6329.

[16] In the Matter of American Telephone and Telegraph Company, Rates and Charges for Communication Services Furnished by Its Long Lines Department, Federal Communications Commission Docket 6468.

[17] *Ibid.*

[18] In the Matter of Methods of Separating Telephone Property, Revenues, and Expenses, Federal Communications Commission Docket 6328.

[19] Report of January 21, 1943, of Committee of Coöperating State Commissioners in Federal Communications Commission Docket 6468.

[20] Personal letter, January 25, 1943.

[21] In the Matter of Telephone Charges of Hotels, Apartment Houses, and Clubs on Interstate and Foreign Telephone Communications, Federal Communications Commission Docket 6255.

[22] In the Matter of Application for Merger of the Western Union Telegraph Company and the Postal Telegraph, Incorporated, Federal Communications Commission Docket 6517.

Master of the Cookie Jar

Political sidelights on the REA-NRECA controversy as seen by a well-informed Washington observer.

By HERBERT COREY

Two perturbed gentlemen have been debating about the REA coöperatives through the columns of the PUBLIC UTILITIES FORTNIGHTLY.

Judson King, director of the National Popular Government League, with fire in his eye asked: "What Is the True Origin of the NRECA?" Mr. King regards the NRECA as an enemy of REA. Clyde T. Ellis responded in tones that rasped like a file under the title: "What's behind the Attack on NRECA?" Neither gentleman pulled his punches. They agreed on certain fundamentals, just as pugilists sign articles before going into the ring:

> The REA is doing a fine job.
> The coöperative theory works.
> The power trust is an octopus.

Then they went in swinging. The present writer will not repeat some of the things each said because he is a timid man. But it seems to him that neither told what the row is all about. So let us proceed as in the case of the court judge who listened for ten minutes to the verbal brickbats hurled at each other by the respective counsel for the plaintiff and defendant. After they had reached the point of commenting on each other's ancestry, the weary jurist remarked: "If the two learned members of the bar have finished identifying each other, we will now proceed with the case!"

On the one side it is apparent that the NRECA proposes to divorce the coöperatives which have paid in full their debts to the REA from further control by that organization. It is equally apparent that the REA wishes to retain a certain control over them.

To a cynical outsider, familiar with the processes of politics, the conclusion is inescapable that the quarrel is over the political direction of the coöperatives of the REA. If these co-ops are tied in closely to the REA itself, then an instrument has been forged which might be of immense value in future national campaigns. So many things have been happening in the past few

years that the public may have failed to comprehend the potential political strength of REA. Administrator Harry Slattery has had something like half a billion dollars of public funds to work with. According to the *World Almanac,* the percentage of American farms with central station electric service has increased "during the period of REA's existence" from 10.9 per cent to more than 30 per cent. About half of the increase was made by private utilities. Approximately 900 co-ops have borrowed from REA.

It is a fact that the members of these 900 (approximate) co-ops owe the improvement in their domestic amenities to the REA. Privately owned utilities are restrained by law and ordinary prudence from advancing their frontiers into territory in which nothing but loss may be expected If there are too few farmers in a county to make a paying line possible no private utility would build such a line. No one questions this common-sense attitude of the private utilities except those who bellow about octopi and the power trust. No farmer would put his hard-earned dollars in a bank if he knew the banker did not demand security for every depositor's dollar he loaned out.

For all that, human nature being what it probably is, the farmers who have benefited through REA are grateful. They have electric lights in their barns and radios in their parlors and their hens hustle in to their egg-laying nooks and their cows are milked and their hogs fenced in and night flying bugs are killed by electric power. The farmers know that an enormous fiscal gap exists between the sum of the public funds granted to REA and the sums loaned the co-ops, because the REA organization has been costly to keep up. But that does not fret the farmers. No beneficiary yet has been fretted by the receipt of funds from a distant and impersonal taxpayer. Of course the members of REA co-ops are appreciative to the masters of the cookie jar.

The question which appears to be preying on the minds of Messrs. Ellis and King is: "How grateful are they? Will they vote our way?"

Both gentlemen have been in politics a long time. Mr. Ellis so severely batted the octopus around that he was elected to Congress. Later he was diselected. Mr. King's National Popular Government League is ostensibly nonpartisan. But he would be the last to deny that he is a man of pronounced views on political issues. As practicing politicians, both gentlemen must realize that if either can bind the REA's co-ops in a single sheaf a useful instrument would be created. The average farmer is as practical a politician as can be found in any river ward. This is said in no disparagement, for it is his right and duty as a citizen to examine any political situation to ascertain what may be the effect on his own prospects. The REA has always looked upon itself as the head of one big family. Now the NRECA is moving into the house, for Mr. Ellis has stated that

"... its membership now totals 643,900 farmers in 46 states ... they intend to serve, ultimately, the 3,000,000 farm homes which are still without electricity. . . . The organization is nonpartisan. Democrats and Republicans are about evenly divided on the board [of eleven directors]; one is a Progressive."

If there are, as Mr. Ellis states, 741 co-ops in the NRECA, anyone can see the possibilities of political action in the 435 congressional districts. The members might be divided on national policies and still get together to bring pressure on the Congressmen who can dip spoons in the sugar bowl of appropriations. REA Administrator Slattery—who is an enthusiast—has from the beginning of his administration pointed out to the co-op members that their benefits have come through the REA, and the plain implication has been that the more loyal they are the more benefits will come. The question as brought out, as it seems to a low-life who has no gifts to bring or even much of a disposition to bring them if he had any, has to do with the political control of the co-ops.

THE control of bodies of voters is a part of the democratic process and Americans must like it for we have never changed it. If the national administration at Washington—any national administration—can swing such a group to serve its ends, then another bludgeon has been added to the arsenal of bludgeons possessed by such an administration; to wit, patronage, the gift and loan of money, the occasional control of a court, river and harbor gratuities, hopes for future road and post office appropriations, and the like. A firm, unyielding, loyal block of the farmer members of the REA, racked up and voted by Administrator Slattery of the REA, would make him a subcenturion to be reckoned with.

The REA's plans are by no means confined to hen-house lighting and cow milking. Events of the past year have shown that some one—not necessarily Mr. Slattery although he has been out in front—has in view linking the REA to the present and future scheme of hydroelectric projects. Readers of the FORTNIGHTLY will recall that Mr. Slattery fought for miles of copper wire to extend his REA grid and for at least a hand on the master switch of several new dams in the Southwest. If he had succeeded, or does succeed in the future, then the REA ceases to be the almoner to the farmer which it started out to be and will become a vigorous competitor to privately owned power companies. Political support is required to carry out this plan. The public's attention has been diverted by other happenings in the news field, but that is the obvious REA intent.

IT may be assumed that as war costs mount and the tax rate goes higher the Federal taxpayer will begin to

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scrutinize more closely Federal projects which not only take money out of the Treasury but interfere with privately owned taxpayers. The more closely knit politically the co-ops can be to the REA, the more likely is success for this grandiose scheme. But no rival can be tolerated in the REA mansion. If the farmers of the 900 co-ops were to join in an independent super co-op of their own they might be in an even more advantageous position. Such a co-op need no longer take orders from the REA in politics. They could ask the REA for what they want with more assurance that they would get it. They could say to the Senators and Representatives from the 46 states in which—Mr. Ellis' figures—there are now 643,000 farmer members of the NRECA, "you must do business with our Mr. Ellis, who will be around to see you as soon as he gets his calendar cleaned up a bit."

Already the NRECA is beginning to plan benefits for its members. The REA beat the NRECA to the hen-house illumination and electric alarm clocks. But the NRECA has been busy with an insurance program on a nation-wide scale. It is no doubt true, as Mr. Ellis has pointed out, that the various kinds of insurance needed by electric co-ops may be bought more advantageously wholesale than by a retail process in the 900 neighborhoods. No doubt Mr. Ellis has other benefits in his hat which he will pull out when the time is ripe, and which will operate as a standoff to the illuminated hen houses which the REA has made available to the farmer.

THE debaters have clearly established the fact that they, or the factions they espouse, are battling for the political control of the REA co-ops, as their debate is listened to from the aisle. Neither has put what appears to be this fact in clear language, but it is no secret that the REA has maintained from its inception that the interest of the neighborhood co-ops will be best served if the national organization supervises and guides them, even after they have paid off their loans to the Federal government. This is, in fact, the excuse for the continued life of the REA, for any local banker for a small commission would be happy to manage the details of borrowing by a co-op from the government. If that were all —merely a borrowing transaction— millions of dollars could be saved annually to the taxpayer. Comptroller General Warren could do all the bookkeeping in Washington without the addition of a single clerk to his staff and would be happy to do it.

Nor does it require singular acumen to read in Mr. Ellis' statement a desire to wrest this control from the REA. He asks somewhat plaintively—why—why the NRECA should be the object of such violent attack. "The coöperatives are successful, independent, free enterprises in no way connected with the Federal government. They have borrowed money from the REA and they have paid back all maturities to date plus $10,039,000 in advance. They are not subsidized. They are owned and operated by the farmers. They have no desire to disturb the private utilities, they are prohibited by law from taking a customer away from them. Wherein, then, have they committed an unpardonable sin?—REA leaders in all (political) parties have long advocated such an organization. He quotes Mr. King's statement that Solicitor Robert

Control of Body of Voters As a Political Bludgeon

"THE control of bodies of voters is a part of the democratic process and Americans must like it for we have never changed it. If the national administration at Washington—any national administration—can swing such a group to serve its ends, then another bludgeon has been added to the arsenal of bludgeons possessed by such an administration; to wit, patronage, the gift and loan of money, the occasional control of a court, river and harbor gratuities, hopes for future road and post office appropriations, and the like."

H. Shields gave an interdepartmental opinion to the Secretary of Agriculture that the co-ops have no right to set up their own mutual insurance program without the approval of the REA Administrator and says they will not abandon their efforts "to relieve themselves of excessive insurance costs through pooling or otherwise." In this instance "otherwise" seems to be a fighting word.

IN the meantime the comparatively minor difference of opinion between two excellent gentlemen over the right of the paid-in-full ex-borrowers from the REA to organize a coöperative of their own has taken on a national aspect. The report is that Mr. Slattery is to be deposed as head of the REA. Those who know him have for the most part a high regard for the administrator. All his active life he has been fighting for more privileges for those he considers the underprivileged. He is a partisan of the more violent and unyielding type, but it has never been charged that he is anything less than sincere. The word goes that the REA itself is to be taken out of the Department of Agriculture and placed in the Department of the Interior.

It may have been something of a misfit in Agriculture. That department is primarily interested in farming operations and is only placidly interested in octopi and the wrongs of its fellow man. Secretary Wickard is a New Dealer and an AA grade farmer but he has never shown more than a tepid interest in power politics. If all the farmers raised bumper crops and sold them at top prices to consumers who would not faint on his doorstep, Mr. Wickard would be very well pleased. It may be that in his heart he

would not be displeased if the Slattery cross were lifted from his shoulders. He has had more crosses lately than a hillside cemetery. It may have been disrupting to a secretary whose mind was fixed on corn-hogs, disappearing eggs, and the Great Wheat Mystery to have Harry Slattery come busting into his office yelling that "they've got me at last!"

YET it must be said that if the REA is, as reported, to be transferred to the Department of the Interior, some attention must be given to the further report that Mr. Slattery is to be liquidated. Not by any means because of any lack of zeal on Mr. Slattery's part, if that depressing tale is true, but because Harold Ickes, owner and operator of Interior, proposes to be bossman of electricity in all its forms, if he can be. If a tax-paid grid is to be established, Mr. Ickes will be the establisher or he will know why. Mr. Slattery is a gentle, kindly, soft-toned enthusiast who could not possibly get on Mr. Ickes' definitely blatant wave length.

No apology is made for the suggestion that Mr. Ickes is not a pleasant person, for he is proud of it. What's more, he gets along pretty well with Congress. That body is tired to its heels with the incompetent fuddlers in Washington and likes Ickes because he is definitely competent. No doubt the tip-off on the Slattery fate came—if we had only recognized it—when at a considerable cost in taxpayer dollars he and the REA were lifted out of Washington and into exile in St. Louis. Not that St. Louis is not a fine city, but Slattery had ceased to be an asset in Washington. One of the more innocent sports of Congressmen is to push people around in committee hearings. Slattery can be pushed. His feelings can be hurt. Mr. Ickes has no feelings that anyone ever heard of and if anyone pushes him he pushes back. Only harder.

IF one of Mr. Ickes men is put in charge of REA, the co-op members will be shown which way lies salvation. They may not go that way. They may prefer to follow Mr. Ellis into the NRECA where they can be independent of any boss except their own bosses. But they will certainly be shown.

And, in the meantime, the feud between the REA and the NRECA and Mr. King and Mr. Ellis is being examined on Capitol Hill. The Senate Agriculture and Forestry Committee will look into the charge that outside political pressure is being used against REA, as alleged by Mr. King. Senator Ellison D. Smith of South Carolina is chairman of this committee, which voted to begin the investigation without submitting its plans to the Senate. A subcommittee headed by Mr. Smith, and which has as members Gillette of Iowa, Bilbo of Mississippi, Shipstead of Minnesota, and Aiken of Vermont, is already at work and will report sometime after Congress returns in September. Smith and Bilbo seem disposed to be friendly to Slattery but Bilbo is a friend of Representative Rankin of Mississippi, a specialist in public power matters, and who is believed to be on the side of the independent co-ops who maintain that they have the right to organize if they wish.

So there appears to be a good set-up for fireworks.

War Taxes and the Utilities

Normal taxes, declares the author, even though at high levels, would ordinarily be passed on to customers through rates for service, but adds that practical aspects of the problem make this solution impossible. What the utilities face as a result of this situation.

By R. W. PETERSON
CHAIRMAN, WISCONSIN PUBLIC SERVICE COMMISSION

War always has been, and always will be, the world's largest consumer. In the consumption of men and money, the present war is without precedent. Its demands, both in men and money, must be met. In the United States, so far as men are concerned, the Conscription Act is supplying the men. So far as money is concerned, the Revenue Act of 1942 will go part way toward supplying it.

Utilities will feel the burden of this unprecedented tax bill. This is not unusual; so will everyone else. Because of the fact that public utilities are regulated, the high war tax brings up several interesting problems, peculiar to that industry, which problems will be discussed herein.

The present Revenue Act provides for a normal income tax on corporations of 24 per cent; a surtax of 16 per cent; and an excess profits tax of 90 per cent, with provision for a special credit or refund equal to 10 per cent of the excess profits tax. This credit is payable in noninterest-bearing government bonds maturing after the war, or may be used up by the taxpayer, in whole or in part, through a credit against the excess profits tax of 40 per cent of the reduction in the taxpayers' debt, not, however, to exceed the 10 per cent credit. Thus, the effective excess profits tax rate becomes 81 per cent.

The excess profits tax may be computed on either an invested capital basis or the average income basis. If the invested capital basis is used, an income credit of 8 per cent on the first $5,000,000 of invested capital; 7 per cent on the second $5,000,000; 6 per cent on the next $190,000,000; and 5 per cent on all over $200,000,000 is allowed. Under the average income method, the excess profits income credit is 95 per cent of the base period net income, plus 8 per cent of the net capital addition during the year, or less 6 per cent of the net capital reduction during the year.

The base period net income is the period commencing with the beginning of the first taxable year after December 31, 1935, and ending with the close of the last taxable year beginning before January 1, 1940. On a calendar year basis, the period covers the four years, 1936 to 1939, inclusive.

WHETHER a utility uses the invested capital or the average income basis of computing excess profits, income credit will depend upon the particular circumstances affecting its tax status. The amount of its statutory invested capital and the level of its income during the base income period are important considerations. Under the Revenue Act, the lower of the taxes determined by either of the two methods is the correct tax. Hence, the general practice will be to compute the excess profits income credit on the invested capital basis and use the credit under the average income basis as a "floor" indicating the point at which the tax liability should be computed on the average income basis.

It might be thought that an excess profits tax would have little effect on utilities because their rates are regulated, and it can be advanced that if the regulatory agency is doing a proper job, there would be no excess profits. But the tax, although called an excess profits tax, is a misnomer, for although it will reach true excess profits, it likewise taxes income which is not ordinarily considered to be excessive. This is due in part to the fact that the excess profits tax is computed before normal and surtaxes. Thus it taxes an income from which all costs have not been deducted and hence will create liability for excess profits taxes even in instances where there are no true excess profits.

RELIEF from a part of the tax burden is given utilities, in a provision of the bill, providing that dividends paid on preferred stock are deductible in computing surtax net income. This provision of the act applies *only to utilities,* and is further restricted to only those utilities whose rates for service are established or approved by a regulatory authority. Thus, the act recognizes that in the case of a regulated industry some concession in tax liability is proper.

The utility tax burden will decrease returns substantially. The exact extent of the decline is difficult to measure due to the variety of circumstances which may affect such tax liability. However, from test calculations which have been made, it appears that utilities frequently have returns, before Federal income and excess profits taxes, of around 8 per cent on their security structure. After the taxes imposed by the new Revenue Act, this return will be reduced to around 4½ per cent in many instances. Under today's taxes, high or even normal returns are out of the question, except perhaps in unusual situations where a utility may be entitled to certain unusual allowable deductions or credits, or may receive tax benefits through consolidated returns.

THE likelihood of passing the war taxes on to customers in the form of rate increases appears remote during the war. The Federal government is active in its efforts to stabilize prices, and utility regulatory authorities have been alive to the problem, and have not

Taxes during and following the War

"IT seems clear that during the war the increases in taxes will not be passed on to customers through higher rates. But what about the period immediately following the war? . . . In accordance with long-established regulatory practices and legal precedent, normal taxes, even though at high levels, would ordinarily be passed on to customers through rates for service. But practical aspects of the problem make this solution unlikely. Even if regulatory authority is willing to grant rate increases, the business may not stand the additional burden on sales."

permitted the passing on of these tax increases. The Wisconsin commission was one of the first to adopt such a policy. On May 5, 1942, in a case involving an application by the Bell Company for an increase in rates at its Madison exchange, the commission said in denying the application:

> We do not look with favor upon proposals to increase utility rates in these times. There may be instances where some increases are necessary in order to insure the financial ability of the utility to continue in the rendition of service. But rates should not be increased solely because the management may consider that its return is less than it is entitled to ask in normal times.
>
> We believe that as far as possible within the range of reasonable requirements, present rates should be stabilized for the duration; and so long as there is a ceiling on prices of other human necessities, the rates for utility service should be "frozen" and certainly should not be regulated upon precisely the same considerations as prevail in normal times.

In its decision in the Panhandle Eastern Pipe Line Company Case, under date of September 23, 1942, four and one-half months after the Wisconsin decision, the Federal Power Commission said:

> So that there may be no confusion concerning the tax situation in connection with the companies subject to our jurisdiction, where necessary to stabilize utility rates at reasonable levels during the war emergency period, we propose to allow as proper operating expenses only such taxes as may be termed ordinary or normal. For the purpose of distinguishing between ordinary or normal and war emergency or abnormal taxes, we conclude that the basis prescribed in the 1940 Revenue Act establishes the highest level of Federal taxes which may be allowed as an element of operating expense for such purpose.

IT seems clear that during the war the increases in taxes will not be passed on to customers through higher rates. But what about the period immediately following the war? The taxes will be with us for some time. It has been estimated that the gross national debt will be in the neighborhood of $300,-

000,000,000 by the end of the war. The cost of paying principal and interest on this debt, in addition to normal Federal expenditures, means that the high tax burden must continue. Hence, the war taxes cannot be viewed merely as a temporary and nonrecurring cost which will soon be past. Instead, it appears that taxes have reached a new plateau, at which level they may remain for a number of years. For the future "normal" taxes must be high taxes.

In accordance with long-established regulatory practice and legal precedent, normal taxes, even though at high levels, would ordinarily be passed on to customers through rates for service. But practical aspects of the problem make this solution unlikely. Even if regulatory authority is willing to grant rate increases, the business may not stand the additional burden on sales. Under the present statute, for example, if a utility is subject to the 81 per cent excess profits tax, a $1 increase in rates would produce about 17 cents' increase in net income after considering that other taxes would also take a piece of the dollar. Increasing rates to cover such taxes, and to yield what has been considered normal returns, might well force rates so high as to deter the development of utility business, or even to cause a decline in the use of utility service with consequent diminishing returns.

It seems obvious then that returns of utilities must suffer. They have already been reduced and will probably remain at a level lower than previously considered normal so long as the war taxes are in force.

The low returns which will be earned may have an effect on what is held to be a reasonable return in rate cases. During the recent past, returns approximating 6 per cent have generally been held to be reasonable and applied in many instances. Under the impact of war taxes, there will be instances where such returns cannot be earned, even though the regulatory agency were to authorize rate increases. War taxes will automatically put a ceiling on returns of around 4½ per cent. If this is all that a utility can earn, after all costs including taxes, it may follow that such returns will be held to be reasonable, or at least nonconfiscatory, under the circumstances prevailing.

It may be that a utility will get the benefits of a large invested capital, because of the high prices it has paid for property in earlier years, and will not be liable for excess profits taxes. Or, it may escape the taxes through the medium of consolidated returns. For these, and perhaps other reasons, the returns of some utilities will not be reduced by the excess profits tax, and may remain at a higher level than those utilities which incur such tax liability.

This brings up the interesting question as to whether the same standard for return should be applied to all utilities. If a soundly financed utility, paying its full share of the cost of war including excess profits taxes, is restricted by such taxes to a return of 4½ to 5 per cent, should the same standard of return be applied to other utilities which, because of fortuitous circumstances affecting their tax situation, pay less taxes and show higher returns?

Of course, one single rate of return is not necessarily reasonable or fair in all instances. A range or zone of reasonableness exists, any rate within

¶ *"ANOTHER effect of the war taxes, particularly the excess profits tax, is that the effective rate base of a utility upon which it can succeed in earning, as contrasted with the rate base which might be fixed by regulatory authority and upon which it might be permitted to earn, is practically established by tax statute. Whether the average income or the invested capital basis of computing excess profits tax liability is used, an effective ceiling has been put on utility earnings. Further, if the invested capital basis is used, that method practically establishes the deduction of straight-line depreciation reserve."*

which might be reasonable. But the low returns, which it is possible to earn by many soundly financed and well-managed utilities, may well influence views of what constitutes reasonable allowable returns over and above all costs in other instances. Hence, there is probability that allowable returns for utilities, not so seriously affected by taxes, may tend toward the level of those of utilities paying higher taxes. How this may be brought about, I do not hazard a guess. I merely cite it as a future possibility.

ANOTHER effect of the war taxes, particularly the excess profits tax, is that the effective rate base of a utility upon which it can succeed in earning, as contrasted with the rate base which might be fixed by regulatory authority and upon which it might be permitted to earn, is practically established by tax statute. Whether the average income or the invested capital basis of computing excess profits tax liability is used, an effective ceiling has been put on utility earnings. Further, if the invested capital basis is used, that method practically establishes the deduction of straight-line depreciation reserve. This condition is brought about because the equity invested capital as defined by statutes includes the money and property paid in for capital stock, and the accumulated earnings and profits at the beginning of the taxable year. The statute provides also that equity capital is to be reduced by the distributions made prior to the taxable year which were not out of accumulated earnings and profits.

NOW, the accumulated earnings and profits for tax purposes may be, and frequently are, different from the book record of earnings and profits. Many utilities have recorded small depreciation allowances on their books. For tax purposes they have been allowed substantially larger straight-line depreciation expense. When the earnings are adjusted to cover the higher tax depreciation expense, it will be found in many instances that, on the basis of tax returns, distributions have been made, not out of accumulated earnings and profits, but have been paid from capital, and statutory equity invested capital is accordingly reduced.

Thus, when utility earnings over a stipulated percentage of invested capi-

tal are subject to an 81 per cent excess profits tax, and the equity invested capital gives substantial effect to straight-line depreciation expense accruals, then, in an indirect way, the deduction of straight-line depreciation reserve has substantially been compelled.

Income taxes have always operated as somewhat of a deterrent of equity financing of utilities, as interest has been a deductible expense for tax purposes. Under the new Revenue Act, equity financing will be still more difficult. Interest expense is deductible for normal income and surtax purposes. Only one-half of the interest may be deducted for excess profits tax purposes under the invested capital method. Preferred dividends are deductible in computing surtax net income. The tax advantage of these deductions during this period of high tax rates constitutes an incentive to do additional financing with interest-bearing or fixed-dividend obligations. Certainly, from a tax viewpoint, there is no incentive to issue common stock.

LOWERED common stock earnings likewise affect the possibility of equity financing. In many instances common earnings will be reduced substantially below the point heretofore required to attract capital. It may be that investors, confronted with low returns on bonds and preferred stocks, and mindful of some of the advantages of equity holdings in the event of inflation, would be willing to invest in common stock even though returns were low. However this may be, the immediately prospective outlook for common stock financing is not bright.

The utility industry generally has a rather high ratio of fixed interest and dividend obligations. State commissions and Federal agencies have for some time directed efforts toward improvement of this situation by getting a greater portion of common stock in the security base, either by debt reduction programs or by financing in common, and utilities have coöperated in these aims in many instances.

It is unfortunate that the current high taxes have an adverse effect on these activities.

This seems unavoidable, however, when the necessity for the present large tax revenues is considered.

Taxation Changes Urged

"BUSINESS *and industry can be placed in such position that they cannot function in such manner as to provide jobs for the people in the postwar period if unwise methods of taxation are put into law. It is essential, therefore, both in the interest of the war effort and reconstruction following the peace, that our tax system be rebuilt in such manner as to best serve the people. It is essential that Federal taxation be brought into line with state and local taxation as a complete system in our country covering these three areas from which money is taken from the people for governmental purposes.*"

—FRED I. KENT,
Chairman, postwar planning committee, Commerce and Industry Association.

Some Accounting Suggestions

The adoption of which, in the opinion of the author, would reduce expenses and improve records.

By H. O. LETIECQ

THE purpose of any system of accounts should be to furnish as much information as possible regarding business affairs as well as a historical record of the financial transactions. It seems that too often the accounting tends to furnish historical records rather than to deal with the present-day vital problems confronting the business and indicate the trends of the business.

The public utility industry is one whose type of operations varies but little. The arts of the industry may change over a period of time but the monthly transactions run along in a more or less uniform pattern. Most utilities prepare monthly statements comparing the current month with the preceding month and the current year to date with the same period of the preceding year.

These statements, while useful, do not give sufficient information or as much as could be developed from the transactions relating to operating expenses.

The problem of the accounting officer, of course, is to provide as much information as possible with the least expenditure for accounting expenses.

In the utility industry at the present time the cost of maintaining the accounting records of operating expenses is considerable. Each vendor's invoice, each material requisition, each payroll item must be entered in the records and classified by the detailed account. It seems to this writer that these costs may be reduced and a more informative set of records produced by the use of standard costs.

As operating expenses are presently accounted for there is no direct connection between them and the rates charged to consumers. At some time during the life of the utility regulatory bodies predicated rates or rates have been established on some economic basis which existed at that time, which was the cost of producing electric energy and delivering it to the consumer for consumption plus a rate of return on the investment. As the accounting records function today we cannot tell the story of the adequacy of the existing rates or how efficiently the organization of the utility is functioning to make profits based on those rates without elaborate studies.

A METHOD can be developed of accomplishing the reforms which are sought and to produce the desired information. Generally when a rate is determined it is based on some representative period of operations. Therefore, this representative period could be used as a standard period. If a 5-year period of operations was used as the representative period then from these five years a theoretical year could be produced as a standard.

At present a utility knows that production expenses were either more or less than last month or a year ago but attention is not directed to the cost of production being more or less than the basis used in setting rates. The adequacy of rates is only thought of in connection with the profit or loss incurred for the period. It would seem that it is more important to know what the variation of costs is from the basis for present rates and why it occurred than what the variation of production expenses is this month compared to last month.

The account groupings to be considered in production and sales of electric energy would be:

(1) Production
These expenses involve those incurred in operating power plants.

(2) Transmission
Costs of operating and maintaining lines for transmitting the energy to area to be consumed.

(3) Distribution
Costs of operating and maintaining lines for distributing energy to the consumers.

(4) Customers Accounting and Collecting

(5) Sales Promotion

(6) Administrative and General

(7) Depreciation

(8) Taxes

(9) Property Losses

WE must first determine what information is desired from this system of accounts. The principal items would be the following ones:

1. A record of the operating and maintenance expenses.
2. Information indicating the relative operating efficiencies of the several departments.
3. Indications of increasing or decreasing costs due to advancing or receding price levels differing from the costs obtained during the periods used as the basis for establishing rates.

In this industry, in most instances, complete records of operating expenses have been maintained, as well as statistical records revealing energy produced by the stations and sales of energy to the consumer. A representative period should be selected and all information available which has a bearing on past performances analyzed and digested.

Immediately preceding an accounting period, information should be submitted in budgetary form by the various departments concerned pertinent to the estimated amount of labor requirements, fuel, and other supplies consumed in production, maintenance materials needed, and other expenses necessary in producing and selling electric energy and in maintaining the property. This budget should be compared with past experiences as to reasonableness and accuracy.

With this information as to the proposed activities of the company during the coming accounting period the purchasing department should be able to

Budgetary Estimates Preceding Accounting Period

"IMMEDIATELY *preceding an accounting period information should be submitted in budgetary form by the various departments concerned pertinent to the estimated amount of labor requirements, fuel, and other supplies consumed in production, maintenance materials needed, and other expenses necessary in producing and selling electric energy and in maintaining the property. This budget should be compared with past experiences as to reasonableness and accuracy.*"

furnish information as to what can be expected in price trends, the personnel department should be able to indicate trends existing in the labor markets, and so the picture of future operations is developed.

IN developing standard costs then that are applicable to each detail account in each account group, past experience in costs which prevailed at the time when rates were established by the regulatory body for the sales of electric energy should be the basis for establishing the standard costs.

Assuming that the utility produces its own power generated by steam plants, standard costs for production should be computed for each power plant. The costs per unit of energy produced by a plant vary according to the output. Commencing at zero the costs are high per unit and gradually reduce until the optimum point of production is reached at which point the costs per unit of energy produced are lowest and then gradually increase again until the maximum output is reached. Therefore, the standard cost per unit of energy produced would be variable for each station, depending upon output and efficiency curve for each station.

In transmission and distribution expenses the costs are not dependent so much upon the amount of energy transmitted but are more in the nature of fixed expenses which must be incurred regardless of the amount of energy which is carried by transmission and distribution lines. Certain of the expenses may be affected by the amount of energy sold such as removing and resetting line transformers and meters. The standard costs of these items should, however, be computed on the basis of the standard cost per mile for operating and maintaining transmission and distribution lines.

STANDARD costs for Customers Accounting and Collecting and Sales Promotion are incurred in proportion to the number of consumers served and, therefore, should be computed by using a unit cost per consumer.

Administrative and General expenses are generally proportionate to the volume of energy produced and, therefore, magnitude of capital investment standard costs are applied on the basis of the unit of energy produced.

With respect to the operation of this system it would function through the use of nine accounts, namely:

Production Expense—Electric Generation—Steam Power
Transmission Expense
Distribution Expense
Customers Account and Collecting Expense
Sales Promotion Expense
Administrative and General Expense
Depreciation
Taxes
Property Losses

As the operating expenses are incurred the individual items are coded by these nine accounts and posted in monthly totals only to the above expense accounts. At the end of each month the developed unit standard costs are applied in memorandum form to the detail operating and maintenance accounts. In the preparation of the monthly operating statements then the totals corresponding to each expense account are brought down and a figure representing the difference between the two amounts is developed and called a variation. The problem then arises as to what this variation represents, and it would naturally have a different complexion, depending upon whether the variation indicates actual costs to be more or less than standard costs.

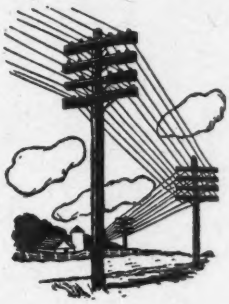
IF the variation is negligible, of course, there would be no need to investigate variation. A running record of price levels should be maintained, using as a base the period used in fixing the rates charged to consumers. If it can be established that price levels have increased, say 15 per cent, then that factor should be given weight in considering variations in spite of the fact that the actual variations developed may be negligible. The budget should be of help in the analysis of variations, as will payroll records of classes of labor. Then, if no plausible explanation of the variation presents itself or if the variation cannot be adequately explained, an analysis of the actual costs may be required by detail operating and maintenance accounts in order to determine the causes for variations.

Depreciation, Taxes, and Property Losses chargeable to operations should also be accounted for through both actual and standard costs. No saving in record keeping would result but a ready check would result for depreciation and the increase or decrease in taxes would be more evident. More information could be provided by this means.

This same philosophy of accounts could be applied to any variety of utility. Modifications to fit the particular utility may be necessary for such purposes as purchased power or where a utility has both water and steam production facilities or where the gas sold is both natural and manufactured.

By the use of these standard costs the detail work of accounting for

operating expenses should be greatly reduced resulting in a real saving in office payrolls and expenses. The efficiency of the plant and management should be more easily recognized. The adequacy of existing rates should be more forcibly brought to the attention of both management and regulatory bodies. Regulatory bodies should be able to follow more readily the progress and efficiency of a utility in the matter of operations, and utilities of the same character would be more apt of comparison.



Electricity!

Deliverer from Human Bondage

". . . I anticipate that this delivery will come from machinery itself; the engine that has mangled so many men will come gently and generously to the aid of suffering human flesh. Cruel and hard to begin with, machinery will become kind, favorable, and friendly. How can it change its soul? Listen. The spark that flashed from the Leyden jar, the little subtle star that revealed itself in the last century to the wonder-stricken philosopher, will accomplish this miracle. The Unknown which has allowed itself to be conquered without revealing its nature, the mysterious captive force, the intangible, seized by human hands, the obedient lightning, bottled and distributed over the innumerable wires that cover the face of the earth with their network—electricity will yield up its energy, will give its help wherever it is needed: in the houses, the rooms, the homes where father, mother, and children will henceforth never be separated. This is no dream. The cruel machine that crushes soul and body in the factory will become domestic, intimate, and familiar."

—ANATOLE FRANCE

Wire and Wireless Communication

AN "extralegal" method of extending the powers of the Federal Communications Commission was described in a document received in evidence last month by the congressional subcommittee conducting hearings in New York city on the FCC's relations with foreign language broadcasting stations.

The document was a report made by Robert K. Richards, executive assistant for broadcasting in the Office of Censorship, in which he described an interview he had had with Sidney Spear, an attorney for the FCC, on August 25, 1942. In this report Mr. Richards noted that "Mr. Spear, as I understand it, analyzes the analyses made by Mr. Truman." Mr. Truman was identified as a broadcast analyst for the Foreign Broadcasting Intelligence of the FCC.

According to the report, Mr. Spear had worked out a method of coöperating with Lee Falk, who had "taken on the job of removing unsavory personnel from foreign language stations." Mr. Falk was identified as chief of the radio division, foreign language section, Office of War Information, as well as continuity writer for "The Phantom and Mandrake the Magician, two eminently gruesome comic strips."

According to much testimony previously presented before the subcommittee, some of it by an attorney for the FCC, the FCC has no legal power to remove anyone from broadcasting. That is the prerogative of the Office of Censorship, and in some instances of the Federal Bureau of Investigation. According to Mr. Richards' report, Mr. Spear said:

> We worked it this way. If Lee found a fellow he thought was doing some funny business, he told me about it. Then we waited until the station applied for a renewal of license. Say the station was WBNX and the broadcaster in question was Leopold Hurdski. Well, when WBNX applied for a renewal, we would tip off Lee and he would drop in on Mr. Alcorn, the station's manager. He would say, "Mr. Alcorn, I believe you ought to fire Leopold Hurdski." Then he would give Mr. Alcorn some time to think this over. After a couple of weeks, Mr. Alcorn would begin to notice he was having some trouble getting his license renewed.
>
> After a couple of more weeks of this same thing, he would begin to put two and two together and get four. Then he would fire Leopold Hurdski and very shortly after that his license would be renewed by the commission.
>
> This was a little extralegal, I admit, and I had to wrestle with my conscience about it, but it seemed the only way to eliminate this kind of person, so I did it. We can coöperate in the same way with you.

The report indicated that Mr. Richards told Mr. Spear he thought the Office of Censorship would not need much help, and that if it wished to have the background of station personnel investigated, it would go first to the FBI.

In another report Mr. Falk, the OWI official, was quoted as having said:

> You can listen to these broadcasters day after day for months and not get enough on them. You must find out what their past associations have been and, if they're open to suspicion, convict them on that and take them off the air.

EUGENE L. GAREY, counsel to the congressional subcommittee, charged

at a hearing on August 11th that the FCC was "still trying to smear an innocent man who can't protect himself." In his turn Mr. Garey was then accused by James L. Fly, FCC chairman, of running the investigation "like the old shell game."

The congressional unit heard testimony early last month from an attorney of the FCC that that body, while lacking legal power to "throw anybody off the air," had taken action achieving that effect in the case of Stefano Luotto. After this testimony had been received the FCC distributed a press release characterizing Mr. Luotto as "an Italian enemy alien who came to the United States in 1931 but failed to apply for citizenship until after passage of the Alien Registration Act in 1940." It also linked the Italian language broadcasts to the allegedly pro-Fascist Dante Alighieri Society.

Mr. Garey read the FCC statement into the record of the committee, and remarked that it was "evidence" of the unfairness of the FCC.

This brought Charles Denny, general counsel of the FCC, to his feet with a demand for permission to explain to the committee the FCC's reason for distributing the press release. Representative Edward J. Hart, presiding, rejected the request. "This committee will conduct its business," he said, "and the FCC will conduct its business—subject to violation of the law. This committee does not intend to be controlled by the FCC."

The witness on the stand at the time was Andre Luotto, brother of Stefano, and an advertising agent in New York, specializing in foreign language commercial broadcasts. Mr. Luotto testified that he had tried to find out why his brother had been dismissed from Station WGES in Chicago. He said he had talked with Representative Vito Marcantonio and officials of WGES, the Office of Censorship, the FCC, and the Office of War Information. He added that he received some assurances that there was "nothing in the record" against his brother. But his brother was not permitted to broadcast.

Mr. Fly, commenting on the committee's reception of Mr. Luotto's testimony and its refusal to allow rebuttal by the FCC, said the situation was "additional proof of the hopelessness of expecting a fair public hearing."

Mr. Fly referred to Andre Luotto's testimony that he had withdrawn an application for transfer of ownership of WOV to himself, as agent for the Mester Brothers, when he heard the FCC intended to postpone a hearing on the transfer until after the war. The FCC chairman added that "the facts are that the FCC voted to hold a public hearing on this application in accordance with its well-established procedure."

At the hearing, Mr. Fly said, Mr. Luotto would have had an opportunity to present fully his views, but Mr. Luotto withdrew his application and the hearing was not held.

CHAIRMAN Fly on August 13th declared that Congress took action nearly a year ago which amounted to a mandate for the commission to study the persons to whom the use of the air lanes is entrusted. In a press conference at the Hotel New Yorker, Mr. Fly termed the investigation, led by Representative Eugene E. Cox, a "washout." As to the FCC's checks on broadcasters, he said "all of this work has been specifically authorized by the Congress after a complete statement from us of the aims and projects of the commission."

The statement, Mr. Fly said, was made by him last September before the House Appropriations Committee. At that time, he said, he told the committee members that the FCC required a large-scale investigation into the personnel of foreign language broadcasting stations, for its own regulatory and licensing purposes and as a service to the Office of War Information. The survey, he told the committee, would treat of the stations' efficiency in serving the public interest.

Commenting on various points brought out in testimony at hearings before a section of the Cox committee in New York, Mr. Fly said he did not believe broadcasters "lived in fear and ter-

ror" of the FCC, although they probably had a wholesome and proper consciousness of the commission's licensing powers.

He said the FCC no longer employed Sidney Spear, who was quoted in a document placed before the subcommittee as having admitted "extralegal" methods of getting rid of broadcasting personnel suspected of disloyal sympathies. Mr. Fly said that he was sure these methods were not an authorized procedure of the FCC, and that they were not sanctioned by any of the seven commissioners.

Mr. Fly repeated a previous statement that in the early days of the war the air lanes had been used for communication with the enemy—songs were dedicated to the crews of certain ships, and prices were "juggled" in broadcasts so as to form code messages. But this sort of thing, he said, had been ended and now the problem was very different.

"There are 170 foreign language stations, and they have done a whale of a constructive job," Mr. Fly said. "I really think they're rendering an awfully valuable service. That is the reason they're allowed to operate in the enemy languages."

Mr. Fly said he had never heard of FCC officials inquiring into the possible pro-Fascist leanings of broadcasters, while ignoring their possible Communist connections. He had not investigated that testimony, which was received at a subcommittee hearing.

Mr. Fly, commenting on radio problems generally, said that there was no chance of the government's "taking over" radio stations. He added that he would always fight such a procedure, and that any such suggestion had been discouraged by President Roosevelt. Freedom of speech is too important, he said, even to permit interference with radio commentators who take a lukewarm or critical attitude toward this country's conduct of the war.

* * * *

FINAL steps in the creation of a single national telegraph system were taken last month as stockholders of Western Union and Postal Telegraph voted to merge the communication agencies. The merger has been formally approved by Congress, the Army and Navy, and the Department of Commerce. The Federal Communications Commission, which had long urged the consolidation, now has the working plan before it for final authorization.

Of the outstanding 1,050,000 Western Union common shares, 785,021 were voted for and 12,673 against the consolidation. Postal Telegraph stock voted in favor of the merger totaled 193,700 shares of preferred and 809,196 shares of common. Voted against the merger were 913 shares of preferred stock and 868 shares of common.

Albert N. Williams, president of Western Union, said that when the deal is finally consummated, Western Union will be in a far stronger position to meet competition of the telephone, the air mail, and postwar developments in radio.

"Western Union will be able to offer more for less," Mr. Williams said. "The merger will be of benefit to all concerned."

A total of 12,815 Postal employees will be affected by the consolidation, and all have been promised equal terms with the 55,600 Western Union employees.

Mr. Williams also said that Western Union was determined to give reasonable protection to all Postal employees but without impairing the position of its own employees. He stated:

> I believe that this principle has been observed in the merger plan. Indeed, in its provisions regarding continued employment, pension protection, and the like, the congressional statute approving the merger goes further than any previous enactment of Congress.
>
> The law requires that employees hired on or before March 1, 1941, must not be dismissed as a result of the merger, but must be retained at least as long as the prior period of employment, not exceeding four years.
>
> This provision might normally be too difficult to fulfill but now that there has been an actual shortage of workers, Western Union should be able to take over the Postal employees at useful work while continuing to employ its own.

REPRESENTATIVES of the American Communications Association, CIO affiliate, opposed the merger on the grounds that pensions of its members might be jeopardized in the event the venture was unprofitable.

Upon consideration of a complaint filed by the ACA, the Federal Communications Commission early last month ordered an investigation to determine whether the Western Union Telegraph Company and Postal Telegraph Company have since March 6, 1943, effected the unauthorized closure of Postal offices with consequent "discontinuances, reductions, and impairment" of telegraph service in violation of §214 of the Communications Act. Concurrently, the commission dismissed other charges against the telegraph carriers contained in the ACA complaint for the reason that such charges did not come within the FCC's jurisdiction or did not appear to justify investigation. The commission also denied the CIO union's motion requesting a temporary restraining order against the companies pending determination of the issues in complaint.

Following the filing of the ACA complaint on June 26, 1943, the telegraph companies were directed to answer the union's charges in writing within seven days.

In its reply Postal Telegraph, Inc., acknowledged closing several of its offices but both companies denied that such discontinuances were in violation of law and requested that the complaint be dismissed.

* * * *

THE American Broadcasting System, Inc., a new Delaware corporation whose outstanding stock is owned by Edward J. Noble, applied to the Federal Communications Commission on August 12th for authority to acquire all outstanding stock of the Blue Network for $8,000,000.

The application showed that Mr. Noble, former Under Secretary of Commerce, had put up $1,000,000 in connection with the transaction and would pay the Radio Corporation of America, owner of the Blue Network, the remaining $7,000,000 upon approval by the Federal Communications Commission.

The new company has a capitalization of 500,000 shares of common stock with par value of $10 a share, but will issue only 400,000 shares, for the present at least.

Mr. Noble personally proposes to put up $4,000,000 of the network's purchase price and has arranged to borrow the remaining $4,000,000 from three New York banks.

The Blue Network, formerly operated as one of the two chains in the National Broadcasting Company's system, has recently been operated, pending sale, directly by the parent company, Radio Corporation of America. The arrangement followed FCC's directive to NBC to dispose of one of its chains. Blue has approximately 160 affiliated stations, 3 owned outright.

Donald Flamm, former owner of radio station WMCA, has brought an action in the New York Supreme Court to rescind the sale of the station in 1941 to Mr. Noble. Mr. Flamm, who received $850,000 for the property, sold January 17, 1941, charged he "was an unwilling seller and was coerced by various threats on the part of defendant and his agent into agreeing to the sale." Mr. Flamm not only wants the station returned to him, but he is asking for an accounting of the profits, explaining he incurred $200,000 expenses in the negotiations.

* * * *

IN its South American rate order (FCC Docket No. 6046), the Federal Communications Commission has, for the first time, formally expressed its view as to the treatment to be accorded Federal income taxes, surtaxes, and excess profits taxes in war time. This was a rate investigation proceeding instituted on the commission's own motion and resulted in an order requiring substantial reductions to be made. The commission allowed Federal normal income taxes and surtaxes for 1941 to be deducted as operating expenses. (See also page 324.)

Financial News and Comment

By OWEN ELY

Commonwealth & Southern Corporation

(Thirteenth article in a series on holding companies.)

COMMONWEALTH & Southern was incorporated in May, 1929—last of the big holding companies to be organized in the heyday of the bull market. While the company was overcapitalized, it avoided the financial pitfalls of many previous holding company promotions. Under the leadership of Mr. Willkie, and more recently Mr. Whiting, the system has achieved an outstanding operating record. Commonwealth residential rates are much lower than the national average —2.92 cents per kilowatt hour in 1942, compared with the United States average of 3.67.

As a result of the stimulus of low rates and former campaigns for the sale of appliances, the use of kilowatt hours by each customer averaged 1,368 in 1942 as compared with the national figure of 1,022.

System properties are divided between the "northern" and "southern" groups, the latter being more closely integrated. The northern group consists of Consumers Power (Michigan), Central Illinois Light, Southern Indiana Gas & Electric, Ohio Edison, and Pennsylvania Power; the southern group includes Alabama Power, Georgia Power, Gulf Power (Florida), Mississippi Power, and South Carolina Power. Population of over 10,000,000, or about 7 per cent of the United States, is served by the entire system.

Capitalization of the Commonwealth & Southern system, based on the 1942 consolidation of balance sheets, is as follows:

	Millions	*Percentage*
Subsidiaries		
Long-term debt	$457	45%
Preferred stock	214	21
Commonwealth & Southern		
Bank loans	10	1
Preferred stock (1,500,000 shares)	150	15
Common stock (33,673,329 shares)	181	18
Warrants (17,588,956)	...	..
Total	$1,012	100%

AFTER setting up a reserve for possible loss in liquidation of Tennessee Electric Power of $15,100,000, the parent company's assets approximate $320,000,000, on which basis the preferred has a book value of $213 a share and the common $3.87 per share. Investments and loans (less the reserve) are about $119,000,000 in excess of the consolidated book values of the securities of subsidiary companies, exclusive of earned surplus since dates of acquisition. As of March 31, 1943, Jay Samuel Hartt appraised Commonwealth & Southern's investments at $236,318,983—about 25 per cent lower than the balance sheet figure and somewhat in excess of the subsidiaries' book value. Including the parent company's net quick assets, it indicates an estimated value for the preferred of $161 a share and for the common of $1.51 a share.

Including the present arrears of $26.25, preferred stockholders would be entitled (on Hartt's figures) to $190,000,000, leaving an equity for the common of $51,000,000; and a division of assets on this basis would be in the ratio of about 79 per cent for the preferred and 21 per cent for the common—very close to the

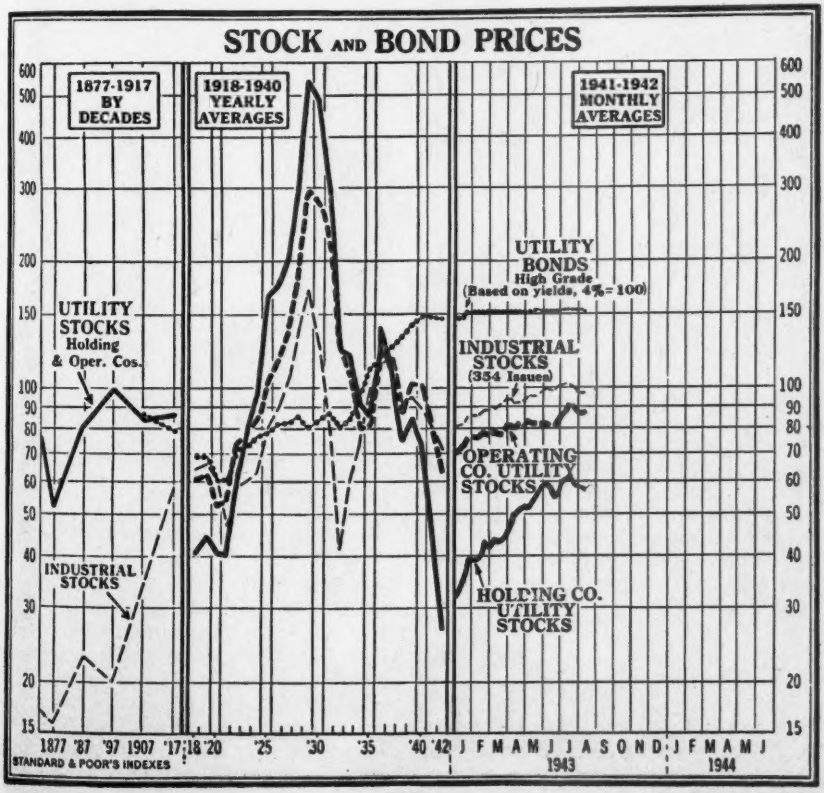
proposed ratios in the plan presented to the SEC.

The Hartt appraisal was based on (1) a balance sheet method, and (2) a market analysis method, but the final values did not use any mathematical formula, and no specific weighting was given to the numerous factors included in the appraisal.

Space is lacking to describe in detail the interesting methods employed by Mr. Hartt. Taking the case of Consumers Power, we find listed 20 different figures for the value of the common stock equity ranging from $45,954,705 to $136,331,667, the final result being $85,000,000, which happens to approximate the figure arrived at "by application of current price earnings ratios of Detroit Edison Company common stock."

COMMONWEALTH'S earnings have been increasing sharply and net income for the twelve months ended June 30th was $13,361,794. On this basis Mr. Hartt's total would reflect a price earnings ratio of 17.7—the principal reason being that he used 1940 figures, before heavy war-time taxes were imposed. Leading utility issues listed on the Stock Exchange are currently selling at 14-15 times earnings and it seems doubtful whether the Commonwealth issues could be liquidated to average much over 12 times earnings.

Based on 10 times the latest net income figures (plus $6,000,000 net cash, nonincome producing), liquidating values of the preferred stock would be about $93; with a multiplier of 12, $111; and a multiplier of 14, $129. Standard &



Poor's latest estimate, published August 9th, was $104, indicating a multiplier of 11.

New Financing

UTILITY financing has continued to lag in recent months, the total for May being $38,000,000, June $2,000,000, and July $24,000,000. August may make a slightly better showing since it will include the $45,000,000 issue of Northern Indiana Public Service 3⅛s due 1973, offered by a Halsey, Stuart syndicate at 102⅞ on August 12th. The offering of $20,000,000 South Carolina Electric & Gas first 3⅝ of 1973 at 104.21 by a First Boston-Lehman syndicate July 28th "went over" very well, being quoted at a premium, but the Northern Indiana offering appeared to be slightly overpriced. A large number of "deals" are in various stages of progress, including refundings by West Texas Utilities, Laclede Gas, Delaware Power & Light, Pennsylvania Electric, Public Service of Oklahoma, etc.

Regarding the Idaho Power common stock offering (by Electric Power & Light), the SEC has permitted a negotiated deal without competitive bidding. It was reported some weeks ago in the press that Blyth & Company would handle the issue, but later reports indicate some competition.

Dillon, Read & Co. has been retained by Michigan Consolidated Gas Company to make a survey of the company's financial structure and plan a refunding program for the bonds and preferred stock (as well as to provide new cash for capital expenditures). The company wishes to place its finances in sound position before dissolution of the parent company, American Light & Traction Company.

Columbia Gas Obtains New Reserves

COLUMBIA Gas & Electric, though indicating in its recent annual report that reserves in the Appalachian field are still ample, has arranged for new interconnections and gas purchases. A 20-year contract has been signed with Hope Natural Gas for a "substantial" supply if Hope obtains FPC approval to build a 1,100-mile pipe line from its West Virginia properties to the Hugoton field in Kansas and Oklahoma.

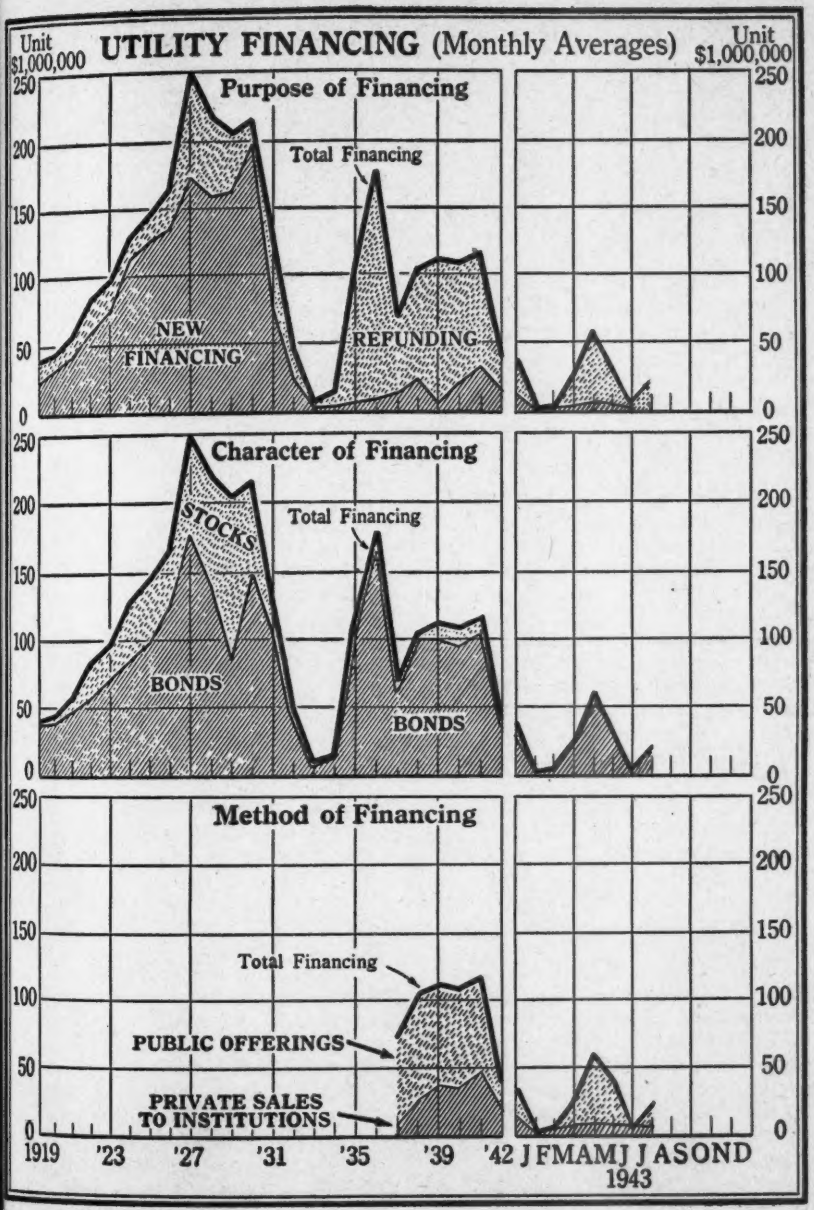
Columbia has also arranged to tap the gas reserves held by the Chicago Corporation in Texas, when transportation facilities are available. The Chicago Corporation is an investment trust which purchased substantial oil and gas acreage some years ago to diversify its portfolio.

Industrial Conference Board Sees Tax Menace

ACCORDING to a tax survey by the National Industrial Conference Board, Federal taxes are preventing the accumulation of necessary reserves for the post-war period. According to the board,

> . . . many small businesses will fail and many larger businesses will find it exceedingly difficult to hold their labor organizations together during the critical period succeeding the cessation of hostilities . . . Since taxes are not due until about a year after the profits upon which they are levied were earned, reserves are set up by corporations to meet the payments when they become due. Many corporations are making current use of the funds represented by these reserves and are depending upon future earnings or liquidation of assets for cash with which to pay taxes. Some corporations feel that this is such a hazardous practice that they refuse to do it; rather, they restrict current operations if necessary, to permit the setting aside of cash to meet these payments. Those who feel forced to use their tax reserves currently because of the urgency of war production are quite apprehensive as to the dangerous postwar situation they are creating for themselves.

While the above did not refer specifically to utilities, it is obvious that the latter are greatly handicapped by present huge tax payments. Funds for additions and betterments are largely obtained by holding dividends to common stockholders at low levels compared with former payments, which in turn makes it difficult, if not impossible, to finance through



Source: Commercial & Financial Chronicle.
Data include electric, gas, telephone, water, and other utilities.

common stock offerings. In former years many utility companies offered "rights" but with utility stocks at present levels this policy has practically ceased. The practice of selling preferred stocks to local customers has also largely ended.

The board suggests certain changes in our present corporate tax system, such as a longer period of carry-forward or carry-back for corporation losses, allowance of contingency reserves as deductions in taxable income, or adoption of the British system of exempting corporation income paid out in dividends (until it reaches the individual). The latter point is of particular interest to the utilities.

Engineers Public Service to Dispose of El Paso Natural Gas

ENGINEERS Public Service proposes to invite tenders from preferred stockholders to exchange their stock for El Paso Natural Gas common, plus cash. Engineers owns 51,357 shares of El Paso, about 8½ per cent, so the company is not considered a subsidiary. Holders of the three preferred stock issues would be offered, for each share held, two shares of El Paso plus the following amounts of cash: $6 preferred, $30; $5.50 preferred, $25; $5 preferred, $22.

Tenders submitted by stockholders will be drawn by lot until all El Paso stock is disposed of. Consummation of the plan would retire about 25,678 shares of Engineers preferred, but the stock would be treated as "reacquired securities" without cancellation.

The decision of Engineers to begin retirement of its preferred stocks may be due to uncertainties regarding the status of its court appeal over the constitutionality of the SEC "death sentence." Difficulties have developed somewhat similar to those which were encountered in the North American Company Case, and it may not be known for some time whether a retrial of the case will be necessary. The case was argued before the U. S. Court of Appeals for the District of Columbia last May, but since that time Judge Fred M. Vinson has resigned to take over Mr. Byrnes' old job in the Office of Economic Stabilization. If the court should decide to proceed, Engineers may recover its earlier lead in the "race" for a Supreme Court hearing. Commonwealth & Southern has dropped its appeal and North American is still in doubt whether it can obtain a quorum of the high court. The American Power & Light and Electric Power & Light cases are pending before the U. S. Circuit Court of Appeals at Boston.

Engineers Public Service has already complied in part with the SEC order, as arrangements are now under completion to dispose of holdings in Puget Sound Power & Light and Key West Electric, while dissolution of Western Public Service has been completed.

Hope for the Future

BOYDEN SPARKES, writing in *The Saturday Evening Post*, has joined the chorus of happy forecasters who view the future with rose-tinted glasses. He describes the plans of General Electric to practically double its prewar output. Despite preoccupation with war problems, research staffs are hard at work planning the "electric home" of the future—for both rich and poor. General Electric, Westinghouse, and others are not only developing improved home accessories and "gadgets" of all kinds but are also working on important new air-conditioning devices. These would heat our homes in winter and cool them in summer with the same machinery, using the "reverse-refrigeration cycle." All this promises a greatly increased residential load for the power and light companies after the war, replacing (with better profit margins) some of the lost factory load.

Mr. Sparkes also points out that with turbines for battleships and victory ships being turned out on a mass-manufacturing basis, the cost savings thus obtainable may benefit utilities in postwar years, permitting greater economies in production of electricity.

FINANCIAL NEWS AND COMMENT

INTERIM EARNINGS REPORTS

	End of Period	12-month Period Last	Prev.	Inc. %	3-month Period Last	Prev.	Inc. %
Electric-gas Holding Companies							
American Gas & Elec. *Consol.*	May	$2.10	$2.58	D19%	$.55	$.55	..
Amer. Power & Lt. (pfd.) *Consol.*	May	8.05	4.14	95	..	..	..
Parent Co.	Dec.	3.18	3.98	D20	..	..	..
American Water Works *Consol.*	June	.75	1.10	D32	..	..	..
Parent Co.	June	.17	.30	D43	..	..	..
Columbia G. & E. (1st pfd.) *Consol.*	Mar.	11.70	7.70	52	5.34	2.60	107%
Com. & Southern (pfd.) *Consol.*	June	9.01	7.46	21	2.20	1.47	50
Elec. Bond & Sh. (pfd.) *Parent Co.*	Mar.	4.22	6.06	D30	1.00	1.02	D2
Elec. Pr. & Lt. (1st pfd.) *Consol.*	May	11.29	10.62	6	..	..	..
Parent Co.	May	1.97	1.66	18	..	..	..
Eng. Pub. Service (common) *Consol.*	June	1.38	1.07	29	..	..	..
Parent Co.	June	.19	.36	D47	..	..	..
Federal Lt. & Trac. *Consol.*	Mar.	1.68	1.53	7	.61	.43	42
L. I. Lighting (pfd.) *Parent Co.*	June	4.87	3.50	39	..	..	..
Middle West Corp. *Consol.*	Mar.	...	...	..	.37	.28	32
Parent Co.	Dec.	.56	.48	16	..	..	..
Nat'l. Pr. & Light *Consol.*	May	.89	.68	31	..	..	..
Parent Co.	May	.02	.11	D82	..	..	..
Niagara Hudson Pr. Co. *Consol.*	Mar.	.33	.46	D27	.10	.06	67
Parent Co.	Dec.	.12	.03	300	..	..	..
North Amer. Co. *Consol.*	Mar.	1.71	1.87	D9	..	..	..
Parent Co.	Mar.	1.24	1.60	D22	..	..	..
Nor. States Pwr. (Del.) (cl. A) *Consol.*	Mar.	D.89	2.33	..	.90	.60	50
Ogden Corp. *Parent Co.*	June(a)	.09	.03	200	..	..	..
Pub. Serv. Corp. of N. J. *Consol.*	June	1.25	1.23	1	..	..	..
Std. Gas & Elec. (pr. pfd.) *Consol.*	Mar.	12.34	7.95	56	4.94	4.63	7
Parent Co.	Mar.	2.68	2.35	14	.31	.06	418
United Gas Improvement *Parent Co.*	June	.54	.57	D5	..	..	..
Consol.	June	.57	.60	D5	.36	.31	16
United Lt. & Pr. (pfd.) *Consol.*	Mar.	10.90(b)	11.20(b)	D3	..	..	..
Electric-gas Operating Companies							
Boston Edison	June	2.26	2.04	10	.55	.40	37
Commonwealth Edison *Consol.*	June	1.83	1.56	17	.87	.78	11
Conn. Lt. & Power	June	2.63	2.72	D3	..	..	..
Cons. Edison N. Y. *Consol.*	June	1.75	1.70	3	.27	.17	58
Parent Co.	June	1.92	1.71	12	.45	.36	25
Cons. Gas of Balto. *Consol.*	June	4.02	3.58	12	.87	.91	D4
Detroit Edison *Consol.*	June	1.36	1.57	D13	..	..	..
Hartford Elec. Lt. Co.	Dec.	2.47	2.95	D16	..	..	..
Indianapolis P. & L. *Consol.*	June	2.17	2.03	7	.36	.35	3
Pacific Gas & Elec. *Consol.*	June	2.26	2.08	9	..	..	..
Public Service of Indiana	June	1.94	1.89	3	..	..	..
San Diego Gas & Elec.	June	.94	.92	2	..	..	..
Southern California Edison	June	1.46	2.02	D27	.30	.34	D12
Gas Companies							
Amer. Lt. & Traction *Consol.*	June	1.83	1.81	1	..	..	..
Brooklyn Union Gas	June	1.92	1.88	2	..	..	..
El Paso Natural Gas *Consol.*	June	3.29	3.10	6	..	..	..
Lone Star Gas *Consol.*	June	.70	1.03	D33	..	..	..
Oklahoma Natural Gas	June	2.93	3.85	D24	..	..	..
Pacific Lighting *Consol.*	June	3.12	3.40	D8	..	..	..
Peoples Gas Light & Coke *Consol.*	June	6.46	5.74	12	1.41	1.40	1
Southern Natural Gas *Consol.*	Mar.	1.81	2.16	D16	..	..	..
United Gas Corp. (1st pfd.) *Consol.*	May	17.49	17.04	3	5.00	4.82	4
Parent Co.	May	17.30	12.62	37	..	..	..
Telephone and Telegraph Companies							
American Tel. & Tel. *Consol.*	May	9.15	9.54	D4	2.35	2.18	8
Parent Co.	June	9.67	9.40	D8	2.22	2.21	..
General Telephone *Consol.*	June	2.18	2.42	D10	..	..	..

D—Deficit or decrease. (a) Six months ended June 30th. (b) Estimate based on report of United Light & Railways Company.

What Others Think

Private Utilities Play Important Rôle In Rural Electrification

THE important part played by private utility companies in electrifying the farms of the nation during the last twenty years is told by Grover C. Neff, president of the Wisconsin Power & Light Company, in an article in the *Edison Electric Institute Bulletin* for August.

After reviewing the history of rural electrification, Mr. Neff summarized his viewpoint in the following manner:

1. Farm electrification could not be developed efficiently on a large scale until the electric operating companies had built the vast network of transmission lines making electric service available at every city, village, and hamlet in the country.
2. The supplying of electric power is not a new thing to the electric operating companies.
3. REA co-ops financed by Federal government are heavily subsidized by the general taxpayer.
4. Farm electrification is in its infancy and the present average use per farm can be increased several times.
5. Farm electrification calls for radical changes in farming methods and machines as electric power is new to the farm.
6. Processing of many farm products can be done on the farm if proper machines and methods are developed.
7. Joint studies by electrical and agricultural engineers, manufacturers of agricultural and electrical machinery, and the electric operating companies are necessary to get the best results.
8. Some definite plan should be developed to get proper publicity on the results of these joint studies.
9. Plans should be made *now* so that no time will be wasted when the war ends.

Mr. Neff called attention to the fact that the electric industry had its start only sixty years ago in New York city, when Thomas Edison built the first electric operating company generating plant. From this humble beginning, he said, approximately $15,000,000,000 has been invested in generating plants, transmission lines, substations, and distribution systems—forming an electrical supply system that is the envy of the rest of the world. He continued:

> We have 6 per cent of the world's population in the United States, and yet we generate and use more than one-third of the electricity used throughout the world. The capacity of the generating plants of the United States exceeds the combined capacity of the generating plants of Germany, Italy, and Japan, including the plants in those areas of other countries that the Axis now dominates. Approximately seven-eighths of the electric service in the United States is supplied by electric operating companies and one-eighth by government-owned electric utilities.

IN the face of this great capacity, Mr. Neff sought to explain why it has been such a slow process to electrify all of the rural communities in the country. He said the real efforts to take the benefits of electric power to the farmers were begun only about twenty years ago, when the Committee on the Relation of Electricity to Agriculture (CREA) was organized. The committee was composed of representatives of the National Farm Bureau, the National Grange, the American Society of Agricultural Engineers, the U. S. Department of Agriculture, representatives of electric operating companies, the electrical manufacturing companies, the manufacturers of agricultural machinery, and others.

This committee, he said, had as its purpose the electrification of farms in the United States in a manner that would be profitable to the farm user as well as to the utility operator, who supplied the service. Farmers without electric service used kerosene for light and horses, gas engines, and humans as their source of power on the farm. The committee plan was to replace many of these with electric power.

Detailing some of the obstacles encountered in making farm extensions, Mr. Neff said:

> It was, of course, necessary to design electric distribution lines to fit the conditions of farm service. The committee early recognized that in most cases the poles would carry only two or three wires. The construction could be light; the electric loads to be carried were small, therefore, lower cost lines could be built to serve farms than the industry had been in the habit of building for urban service. In a number of cases copper-clad conductors were used and in some cases iron wire was used as primary conductor. From 1921 to 1931 great strides were made in reducing the cost of farm lines. Further advances have been made since 1931 in reducing the cost of distribution lines and we should always try to reduce the cost whenever it can be done without impairing the quality of the service.

In connection with the problem of reducing the cost of constructing farm lines, Mr. Neff pointed out that it was equally important that every effort be made to increase the use of electric energy on the farm—a slow and tedious job. He called attention to the fact that any change of such a great magnitude as that involved in a change in the form of power is difficult. He said:

> People do not change habits quickly. The farmer does not change his habits quickly, and we cannot expect this revolution in farm methods to take place in too short a time. As a matter of fact, it will probably take a generation to bring it about. On the farmers' part it will require the expenditure of a large amount of money for wiring and equipment, and it will require a lot of help from all the people who are interested in electrifying the farms of this country, if a good job is to be done.

THE CREA did an excellent job of promoting research in agricultural colleges in the development of farm electrification and in broadcasting the results of these developments so that they could be brought to the attention of the farmers. With enactment by Congress of the Rural Electrification Administration law in 1935, more rapid expansion of rural electrification was undertaken, although general tax moneys of the Federal government were being used to finance the projects, Mr. Neff said. The CREA began to break up shortly after REA came into existence and in 1939 CREA was disbanded. This was very unfortunate for rural electrification, said Mr. Neff, as the abandonment of this committee was a distinct setback to the intelligent and efficient use of electricity on the farm.

It seems, said Mr. Neff, that the main objective of the REA until the war broke out was to build farm lines anywhere and everywhere without regard to whether or not the areas served would support electric service and with very little attention to the application of electric service to farm operation. He pointed out that no business concern that has to make gross income equal expenses could make such a development. He continued:

> In some parts of the United States it may be necessary to subsidize this development if farmers are to get electric service, and it may be a desirable thing to do. However, let's not be misled into believing that the REA set-up is a proven, successful, business venture paying its own way. It is in fact a heavily subsidized development paid for by the general taxpayers of this country. When you hear anyone say that the REA co-ops have repaid the government more than the amounts due on their loan contracts, please remember that (a) no repayments at all are due on the loan contracts for the first three or four years; (b) co-ops are heavily subsidized by the general taxpayers; (c) in REA bookkeeping practically nothing is set aside for depreciation.
>
> For very large farming sections of this country farm electrification need not be subsidized at all. The business can be developed so that it will stand on its own feet. To do this the line extensions must be carefully planned and the use of the service in farm operations must also be carefully developed. It is hoped that we will soon begin again to pay more attention to the proper application of electric power to farm operations which calls for changes in methods of farming, changes in farm management and in the type and style of machines used on the farm.

AS of December 31, 1942, the electric operating companies, wrote Mr. Neff, were supplying electric service to about 1,500,000 farms retail, and the REA coöperatives were supplying electric service to nearly another 1,000,000 farms. However, more than half of the electricity distributed by the REA co-ops

was purchased wholesale from the electric operating companies' systems, so that as of today the electric operating companies furnish electrical energy to 1,500,000 farms retail and to a major part of a million farms at wholesale.

He said there is much work to be done to develop rural electrification to the point where it will furnish maximum benefits to all concerned, and he suggested the work must be done jointly by some group that understands the electrical problems working with another group that understands the farm problems. He urged that various interested groups join forces in making this important joint effort. In addition to research, he said it is vitally important that the farmers be furnished with the facts through generous publicity presented in a manner which will be accurate, reliable, unsensational, constructive, practical, and easily understood, repeated over and over, year after year. He added:

> I think organized and sustained effort should be put into publicity. If some way can be found to support, improve, and expand *Electricity on the Farm* and increase its coverage, that would be a vehicle ready-made for the purpose. But it does not now reach enough users; probably not more than one farm user in ten gets this magazine regularly. It has certainly done a good job for sixteen years (next month) through depression and war, and deserves more than verbal commendation.

Explaining further, Mr. Neff said that at the present time the farms served by REA co-ops use an average of less than 100 kilowatt hours per month per farm, and the farms served by electric operating companies average about 180 kilowatt hours a month. He expressed the opinion that rural electrification will not be producing full benefits to the farms of this country until some 4,000,000 farms are using an average of 500 kilowatt hours a month. This 2,000,000,000 kilowatt hours per month gives some picture, he said, of the size of the development which lies ahead and should spur the utilities to get interested in the subject and to work on it.

—C. A. E.

Study Forecasts Postwar Power Picture

THE volume of electric business which will be done by ten operating subsidiaries of the Commonwealth & Southern Corporation system is expected to be slightly above the 1942 level by 1947, assuming that the war has been over long enough by that time to allow for any immediate postwar readjustments.

This estimate of growth is contained in a report on postwar electric power volume for the system, prepared by Lionel D. Edie & Co., Inc. For the purposes of the study, the following subsidiaries, responsible for about 100 per cent of consolidated electric revenues, have been included in the system: Alabama Power Company, Central Illinois Light Company, Consumers Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, Ohio Edison Company, Pennsylvania Power Company, South Carolina Power Company, and Southern Indiana Gas & Electric Company.

The report points out that it has taken 1947 as representing a normal peace-time year beyond problems of industrial conversion and transition, and that it is not to be interpreted as a prediction as to the end of the war.

In arriving at the conclusions contained in the report, two broad basic economic assumptions are made. They are as follows:

> (a) The Federal Reserve Board index of industrial production will be 150. This has been arrived at through study of each of the 28 industry components making up the index.
>
> Many economic experts estimate a level of 180-190 for the Federal Reserve Board index in this postwar period. It is our opinion that this represents too optimistic a prediction and that a figure of 150 is conservative and realistic.

Courtesy, The New Yorker

"NOW, UNDER EXACTLY WHAT CIRCUMSTANCES DO I THROW PEOPLE OFF?"

(b) We believe that the postwar period will not be characterized by a runaway inflation.

IN formulating estimates of postwar volume for Commonwealth & Southern, the analysts have relied to a large extent upon projections for the industry as a whole. The report summarizes the expected sales in the three principal classifications and also gives the percentage changes in 1947 as compared with 1942 for both Commonwealth & South-

COMMONWEALTH & SOUTHERN SYSTEM
KILOWATT HOURS SALES VOLUME
(000)

	1939	1942	1947
Residential	1,243,361	1,686,436	2,190,000
Commercial	1,028,097	1,276,828	1,700,000
Industrial	3,493,967	5,775,342	4,900,000
Total	5,765,425	8,738,606	8,790,000

PERCENTAGE INCREASE IN 1947 OVER 1942

	Commonwealth & Southern	Industry
Residential	30.0	30.0
Commercial	33.3	30.0
Industrial	—15.2	—20.0

The foregoing estimate of residential volume in 1947 assumes that the rate of increase for the system will be the same as that for the industry. Based on a projection for Commonwealth & Southern, residential sales would be increased by 130,000,000 kilowatt hours and the total sales for the three major classifications in 1947 would be 8,920,000,000 kilowatt hours.

ern and for the industry. The above tabulation presents the picture.

The above tables indicate a substantial increase in consumption of residential and commercial power in 1947, as compared with 1939 and 1942, whereas the projected figure for industrial consumption in 1947 is somewhat lower than 1942, but considerably higher than 1939. It will be noted also that in the percentage table, Commonwealth & Southern may expect a 15.2 per cent decrease in industrial consumption while the industry may expect a 20 per cent decrease, compared with 1942.

The study was made on a rather broad basis and electric sales were segregated into residential, commercial, and industrial. Sales for street and highway lighting and sales to other utility groups have not been considered in this study. With respect to residential sales, the study points out that for the purposes of postwar estimate of residential volume, there are many factors to which due weight should be given. Among these are the following:

(a) Population growth in the various service areas.
(b) The level of individual income.
(c) Prospects for expansion in residential building.
(d) The ratio of population to customers served.
(e) The effectiveness of sales promotion activity and the degree of appliance saturation.

The report continued as follows:

The foregoing affect forecasts to the degree that they change the trend of growth which has prevailed in the past. Our task has been to project the trend based on past experience and to do so, first, for the industry as a whole and second for the Commonwealth & Southern system. Then we have considered whether the five factors mentioned above require any change in the trend. We do not find any reason to assume a change in trend.

Prior to the war, Commonwealth & Southern followed an aggressive promotional policy. Reduced rates greatly stimulated customer usage with the result that the trend of residential sales was considerably steeper for this system than for the industry. There is no reason to expect that re-establishment of this aggressive promotional policy after the war will not again be effective. However, to be on the conservative side we are assuming a narrowing of the spread between the trend of residential sales of Commonwealth & Southern and the industry trend . . . we first projected the industry trend to 1947. That gives a figure 30 per cent above 1942. We then applied this industry percentage to Commonwealth & Southern and arrive at 2,190,000,000 kilowatt hours for 1947 compared to 1,686,436,000 kilowatt hours for 1942. Considering the corporation's past experience, this estimate is definitely on the conservative side. By projecting residential sales for the system, a slightly more liberal estimate is obtained. Such a procedure indicates a volume

of 2,320,000,000 kilowatt hours, an increase of 37.5 per cent over 1942.

UNDER the heading of "Commercial Sales," the study makes the following observations:

The forecast of commercial sales presents numerous difficulties. Unlike industrial power volume, there is nothing to which this trend can be correlated and, in a large measure, this probably can be attributed to the fact that this classification represents a catchall for customers who do not distinctly fall in either residential or industrial brackets. Since 1933, commercial sales for the entire industry have followed almost an uninterrupted upward trend. Periods of minor depression appear to have had no noticeable effect upon sales, and there is ample justification for projecting the 10-year trend. Blackouts and dimouts, together with other present and proposed restrictions upon commercial usage, are having the effect of stifling growth, but with a return to normalcy, with business activity at a relatively high level, there are no grounds for expecting that volume will not conform to the long-term trend. With improved lighting technique, this field would seem to offer attractive postwar possibilities for expansion and development. In the case of Commonwealth & Southern, commercial sales have not shown any marked deviation from the industry trend except in the 1941-1942 period, and by 1947 we would estimate a volume in the neighborhood of 1,680,000,000 kilowatt hours.

It was explained in the study that industrial power sales follow the Federal Reserve Board index of industrial productivity very closely. The report continued:

... Combined figures for Commonwealth & Southern, representing sales of the ten subsidiaries, very nearly coincide with this index. . . . Because of the diversified character of the economy served by the system as a whole, it is a proper assumption that this correlation will continue after the war. In so far as the four largest subsidiaries are concerned, deviation from the index will vary, depending upon the outlook for individual industries representing principal large power users. In arriving at our conclusion we have reviewed regional differences, the industrial breakdown, and prospects for the most important customers. In the case of the two largest southern companies, Alabama Power Company and Georgia Power Company, the textile industry is responsible for 35 per cent and 62.5 per cent respectively of the industrial revenue of these companies. Postwar prospects for this segment of the economy are considered to be distinctly favorable and growth prospects for the Southeast are considerably better than average. In the case of Consumers Power Company, over 50 per cent of industrial revenue normally arises from sales to the automotive and allied industries.

Conservative estimates place postwar automobile production at 5,000,000 to 6,000,000 units. Volume in this order would assure a high level of sales for Consumers Power Company and greatly stimulate the general economy of the area served. Ohio Edison Company normally derives the largest proportion of industrial revenue from sales to the machinery, apparatus, and metal products industries and to iron and steel manufacturers. While this type of business is generally quite cyclical, nevertheless past experience of Ohio Edison Company has shown that there is a distinct relationship between its industrial sales and the Federal Reserve Board index. A review of the various factors affecting postwar industrial volume of Commonwealth & Southern leads to the conclusion that the traditional correlation between power sales and the Federal Reserve Board index will be maintained in the postwar era.

Based upon the outlook for the various industries composing the Federal Reserve index of industrial production, it is estimated that in 1947 the index will be in the neighborhood of 150. Business activity at such a level would mean industrial sales for Commonwealth & Southern in the neighborhood of 4,900,000,000 kilowatt hours.

SUMMARIZING the Federal Reserve Board index of industrial production, the study concludes that there will be a 25 per cent decline in business activity in 1947, as against the 1943 peak level of business. This will mean, the study contends, that the Federal Reserve Board index will drop from 203 as of the present to approximately 154 in 1947. The period 1935-39 is used as the base period of 100.

The study foresees a shift of some 13,000,000 employables to other employment as a result of the change from war to peace-time production. It notes that it is the objective of the American government and businessmen to attain full employment in the postwar period. Should the industrial production index fall from 203 to 154 in the postwar years, it will be necessary for manufacturing indus-

tries to release approximately 5,000,000 now employed. This is based on the fact that a 24 per cent reduction in manufacturing activity would require a 25 per cent reduction in employables. To this 5,000,000 reduction in employed, there must be added those discharged from the military and naval services. This may approximate 7,000,000 to 8,000,000 which gives a total of 13,000,000 seeking other employment.

The study then says that it is believed absorption of this 13,000,000 must be accomplished by the return of women to the homes, trade, finance, services, agriculture, self-employment, and construction.

This presents a major problem for the Americans, the report goes on to say, adding that the most promising source of additional employment in the postwar period now appears to be the construction industry.

—C. A. E.

FCC Probe Reveals Important Points

FROM the mass of testimony and documentary evidence being made a part of the record in the Cox select committee investigation of the Federal Communications Commission, *The Wall Street Journal* has singled out significant facts for analysis.

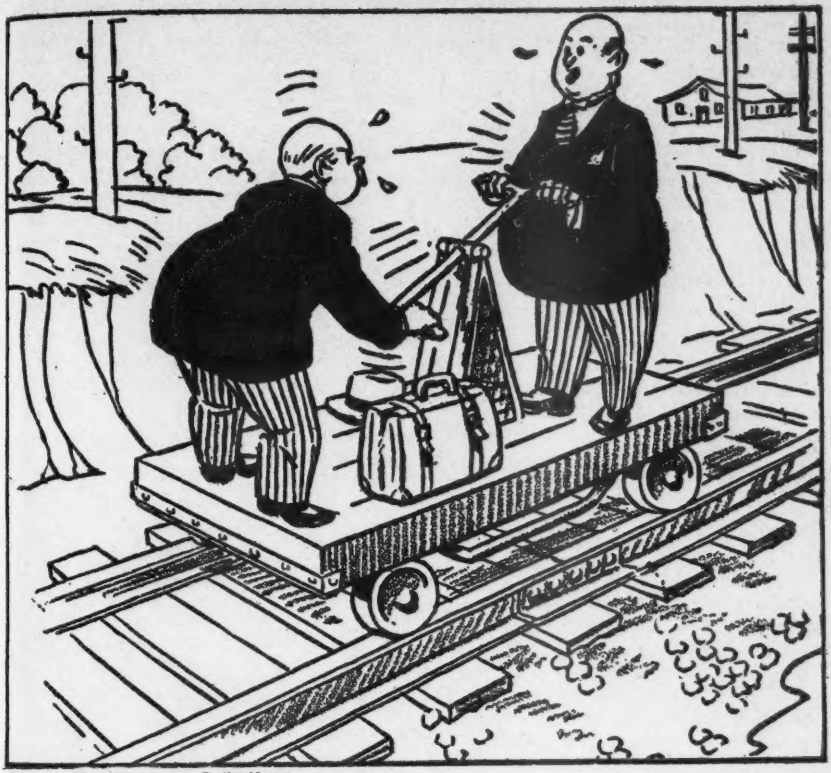
Editorially, the *Journal* says that a report presented to the congressional committee in connection with FCC's relations with stations broadcasting in foreign languages discloses three main points:

> 1. Lee Falk is chief of the radio division, foreign language section, of the Office of War Information. Sidney Spear is an attorney for the Federal Communications Commission. Mr. Truman is a broadcast analyst for the Foreign Broadcasting Intelligence of that commission. The report in question is that of Robert K. Richards, executive assistant for broadcasting, in the Office of Censorship.
>
> 2. The matter of the report concerned the use of the radio by persons propagating material of a "subversive" character and the measures taken to stop it. In these measures the OWI and the FCC collaborated.
>
> 3. The procedure is described as follows: If Mr. Falk (OWI) discovered that a speaker was broadcasting objectionable information he would notify Mr. Spear (FCC). Nothing would be done about it until the time came for renewal of the broadcasting license of the station that carried the offending matter. When that time came Mr. Falk would "drop in" on the manager of the station and suggest that the speaker responsible for it should be dismissed. He would give the manager some time to think it over during which time renewal of the license would be held up. Presently the manager would "put two and two together and make four" and the objectionable speaker would not be allowed to continue.

The *Journal* points out that under the Federal Communications Act, broadcasting stations operate under licenses which must be renewed every six months by the commission, which has extensive powers to grant or deny a renewal. The *Journal* contends, however, that the law does not give the commission power to remove anyone from broadcasting over a duly licensed station. This authority is possessed by the Office of Censorship and, to some extent, by the Federal Bureau of Investigation. Mr. Roberts of the Office of Censorship, the editorial continues, told Mr. Spear of FCC that the office would not need much help in removing objectional speakers and that the FBI could do all the investigation needed.

The *Journal* continues:

> The foregoing facts disclose an intolerable situation. On the statement of its own attorney (Mr. Spear) the Federal Communications Commission has been permitting its agents to act in a manner for which it has no shred of legal sanction—Mr. Spear admitted that it was "a little extralegal" and that it involved a struggle with his conscience—and in a matter vitally concerned with the principle of freedom of speech. What it amounted to was the use by the commission (through its agents) of its licensing power to censor broadcasts, when the law gave it no such power. There is only one word for such action and that is usurpation.
>
> The enormity of the offense lies in the fact that limitation of possible air channels in face of a wide demand for their use neces-



Courtesy, The Washington Daily News

"IT WAS NICE OF THE RAILROAD'S PRESIDENT TO LET US USE HIS PRIVATE CAR!"

sitates control of their distribution by public authority, and the licensing method has been adopted to that end. This means the lodgment of great power in the licensing authority, in this case the Federal Communications Commission; namely, the power to say who shall not be allowed to use the air channels. It is apparently impossible to express in statutory form and in detail all the conditions which applicants for their use must satisfy. A wide discretion is necessarily left to the commission. That discretion is always possible of abuse. The method described in Mr. Richards' report is a peculiarly flagrant case of abuse. It needs but little imagination to picture the consequences of its possible employment on a wider scale.

THE editorial insists that this is the sort of thing that must be stopped if we are to keep our liberties, and added that the surest way to stop it is to invest with powers such as we have to delegate to administrative agencies only officials whom we can surely trust not to abuse them, or to permit their subordinates to do so.

Even *The Washington Post,* which has repeatedly attacked the Cox committee investigation, has grudgingly conceded that evidence has been put into the record which obviously should have public airing. It noted particularly that one witness had charged FCC with applying pressure to force the dismissal of an announcer and added that Chairman James L. Fly had replied in a statement that the "commission would be derelict in its duties if it did not check on these domes-

tic stations broadcasting in the enemy's own language." Commenting further, the *Post* said:

> Congress would doubtless like to be informed on this and various other aspects of the FCC's operations in war time. No doubt that is why the great majority of House members voted for the present inquiry. But they cannot hope to get an accurate picture of what the FCC is doing from the Cox committee. Its deep-seated bias is now so thoroughly established that only those who believe in condemnation of individuals and agencies by smearing will take it seriously.

The *Post* then lashed out at Congressman Cox, who has been accused by FCC of accepting a $2,500 fee from a radio station for legal expenses.

Stock Exchange Magazine Reveals Rise in Utility Issues

AN average advance of 61 per cent has been made by representative common stocks of public utilities since November 1, 1942, it was revealed in a survey published in the July issue of *The Exchange,* magazine of the New York Stock Exchange. One company, Electric Power & Light, has jumped 388.9 per cent.

Although railroads were given most attention when the Revenue Act of 1942 was passed in November, declared the article, utilities also benefited notably from two of its provisions: That discount on bonds purchased by the companies in the open market need not be considered taxable income, and that a company that retired debt might obtain an immediate credit against excess profits taxes. The article said utilities did not have the huge earnings of the rails, but they had the right to act and many of them did it by anticipating sinking funds and serial maturities. The article continued:

> Then a third provision of the Revenue Act impressed itself on close observers of the public utility industry, although it was not publicized to any great extent. The law permitted all corporations previously allowed to consolidate earnings for excess profits tax purposes also to file consolidated normal and surtax returns; and it allowed the deduction of public utility operating company preferred stock dividends from surtax net income.
>
> The utility industry is the largest beneficiary under the consolidated earnings proviso because of its preponderance of holding companies.

The following table shows the manner in which utility securities on the New York Stock Exchange have acted:

"IN November, 1942," the article went on to say, "the lowest average price of 15 public utility common stocks used in making up the Dow, Jones & Co. average was 13.85. From that level the average advanced until in the current month [July] it reached 22.30—a rise of 61 per cent." The article continued with the following:

> Presumably, a realistic molder of market opinion has been supplied by early results of the Public Utility Holding Company Act of 1935. It may be argued that from 1937 to 1940, when public utility securities were decidedly unpopular, the shock caused by the "death sentence" mandate for many holding companies was being absorbed. From 1940 to 1942, while the philosophy of the Securities and Exchange Commission was being formed and regulations under the Holding Company Act were in the draftsmen's hands, the utility field came in for a great deal of public study. Then, when dissolutions following the § 11(b)(1) and (b)(2) order of the SEC became the order of the day, light began to break through the clouds.
>
> For a parallel to what has followed, reference seems logical to events of importance, marketwise, which followed the Supreme Court's order of dissolution for the old Standard Oil Company in 1911. Standard Oil shares might sell for upward of $600 each on the day of the decree, but the public had a vague idea, indeed, about what they were actually worth. Worth, that is, in terms of the stocks of Standard's subsidiary companies, then ordered to set up for themselves.
>
> The parallel is not too far-fetched, but the implications of the old antitrust suit seem inapplicable to the public utility holding company situation of today. The parallel may, however, be carried further. Liquidation of holding companies has disclosed something which received comparatively little thought for some time after the "death sentence" jolt was felt by the market.

PRICE PERFORMANCE OF PUBLIC UTILITY STOCKS

Preferred	*July 15, 1942*	*July 15, 1943*	*Per Cent Gain*
Amer. & For. P. $6	21	76	261.9
Amer. P. & L. $6	17¼	41¼	139.1
Col. Gas & El. 5%	*34	69	102.9
Com. & Southern	24½	66¾	172.4
Cons. Edison	89½	104⅛	16.3
Electric P. & L. $6	20⅜	63⅛	208.5
Engineers Pub. S. $5	*49	81	65.3
Phila. Co. 6%	35	49⅛	40.4
Pub. Serv. of N. J. $5	*70½	92¾	31.6
United Corp.	11¼	33½	183.0
Common			
Amer. Water Works	2⅜	7⅛	200.0
Col. Gas & Elec.	1¼	4½	260.0
Commonwealth Ed.	20	26⅝	33.1
Cons. Edison	13½	23¾	77.6
Electric P. & L.	1⅛	5½	388.9
Engineers Pub. S.	2	6¾	243.8
North American	7⅜	16½	123.7
Pac. G. & Elec.	19⅜	29¾	51.6
Pub. Serv. of N. J.	10½	16½	63.0
So. Cal. Edison	18⅝	24⅝	32.2

(These 10 common stocks listed on the New York Stock Exchange are included among the 15 used to calculate the Dow, Jones & Co. public utility average.)

Bonds Listed on Stock Exchange			
A. & For. P. 5s, 2030	64½	90	40.4
Amer. W. W. '75	*91	105½	15.9
Col. G. & El. 5s, '61	88½	102	15.3

*Bid price.

According to the article, the market of 1942-43 has, "to a degree, shown that the securities of operating companies, in process of distribution under the Holding Company Act, are tagged with a higher value in the open market than were the securities of the holding companies, themselves, not so long ago."

Eastman Modifies "Featherbed" Rules

RAILROAD jobs maintained under so-called "featherbed" rules, subject to controversy between railroad management and labor, may be getting a real test from the Office of Defense Transportation.

The (Baltimore) *Sun*, editorially, comments upon statements of George P. McNear, Jr., of the Toledo, Peoria & Western Railroad, which was seized in March, 1942, by the government in a labor controversy. McNear had lashed out against Federal management before, but this time, the editorial points out, McNear apparently gauged his remarks to reflect an indication of a change of attitude on the part of the Federal government with respect to the "featherbed" rules.

The editorial quoted McNear as saying that Joseph B. Eastman, ODT director, and operator of the railroad for the government, "is making a helpful and active guinea pig of the TP&W."

The editorial said in part as follows:

> What Mr. McNear means is that, in his opinion, Mr. Eastman is suppressing various "featherbed" operating practices on the road. These practices were one of the original causes of the row which resulted in the seizure. It will be remembered that Mr. McNear tried to introduce new operating rules on the road as a means of increasing efficiency and reducing cost. The rail brotherhoods objected. In the ensuing controversy Mr. McNear declined to submit to a WLB ruling. He claimed that the procedure which he had a right to seek under the National Railway Labor Act had not been followed. The agencies involved cited the emergency conditions of war. After a good deal of further bickering, the seizure occurred.

GENERALLY the "featherbed" rules require that men be paid for work not done or not needed in the safe and efficient operation of a railroad line. McNear, during the controversy, had prepared a statistical study of the man hours lost through government application of the controversial rules which had been demanded by the railroad brotherhood. McNear had claimed, among other things, that from March to July of 1942, after the government had taken over, the man hour needs of the road went up 58 per cent for a given amount of service rendered. When Eastman took over he restored many of the so-called "featherbed" rules, but since, according to McNear, these rules have been modified or abrogated, because ODT found they impeded the efficient operation of the road.

McNear cited at least a dozen brotherhood regulations, most of them involving the use of extra crews to perform switching operations or the payment of double time to through train crews doing this work which he said had been "abrogated" by Eastman.

"Mr. Eastman is proving our case for us," said McNear. "He has been returning towards the efficient rules we had in effect at the time of the seizure. Quite contrary to his original intentions, Mr. Eastman is making a helpful and active guinea pig of the TP&W."

THE *Sun* editorial noted that Eastman had attacked McNear's original position when the road was taken over by the government and said:

> . . . But one or two things may be noted. Mr. McNear says he bases his new statement on the testimony of Mr. Eastman himself in extended hearings before the House Military Affairs Committee. Both sides agree that the efficiency of the road has increased greatly.
>
> Certainly if the increase in efficiency has been achieved as a result of, or in spite of, the use of fewer men for a given amount of service, the public ought to be informed about it. The public has need of such information in fighting other "featherbed" and make-work practices which clearly waste manpower in a time of quite desperate manpower shortage.

McNear said that the brotherhoods had agreed to some of the changes made by Eastman in the standard operating rules and were closing their eyes to other modifications. As a result he said the TP&W is now operating under less stringent union regulations than are enforced on railroads generally. No longer is it necessary for the road to have yard engineers and crews on duty when not needed.

Also, through trains now may run the full length of the line without changing crews at Peoria, and interchange crews at the end of a line may handle cars going in both directions.

—C. A. E.

¶ "WE *started out as a nation of checks and balances, and the tradition of checks and balances lives in our blood. We continue to live like that despite the disapproving frowns of the new preachers of the higher efficiency and the higher planning. We know that free government is often wasteful and misguided, but we also know that in the end freedom is the most efficient of all blueprints and plans. We know that in the long run freedom is the best planner of all.*"

—FREDERICK C. CRAWFORD,
President, National Association of Manufacturers.

The March of Events

FPC Holds Rivers Navigable

THE Federal Power Commission on August 12th announced its order and Opinion No. 94 finding the Menominee and Michigamme rivers in Wisconsin and Michigan to be navigable waters of the United States and directing the Wisconsin Michigan Power Company, Appleton, Wisconsin, to amend, within ninety days, its pending application for a Federal license so as to include the company's constructed Twin Falls hydroelectric development on the Menominee river as a part of the complete project which includes the Way dam and reservoir and Peavy Falls dam and power plant on the Michigamme river.

After pointing out that one of the principal issues of this proceeding was whether the Michigamme and Menominee rivers are navigable waters of the United States, the FPC opinion referred to the fact that from 1868 to 1900 more than 10,000,000,000 board-feet of boards, pulpwood, and forest products were floated on the Menominee river and its tributaries, ranking it as one of the greatest logging streams of the United States.

Bowles Reframes OPA

REORGANIZATION of the Office of Price Administration has been started by Chester Bowles, senior deputy administrator, he said recently. This is designed to end, he intimated, the agency's conflict with business, but without impairing its price and ration programs.

Under the new program, Mr. Bowles said, executives nominated by businessmen will devise and administer pricing and rationing regulations, and the affected industries will set up compliance panels which will carry a large part of the responsibility for seeing that the OPA regulations are observed.

Mr. Bowles made his disclosures at a press conference called to announce the appointment of James F. Brownlee, one-time head of the sales planning division of General Foods Corporation, as OPA Deputy Administrator in charge of prices.

In an over-all discussion of OPA's operations and policies, Mr. Bowles made it clear that the agency has no new rationing program in view "with the possible exception of coal." He expressed complete confidence in the agency's ability to get living costs back to September 15, 1942, levels, stating that the trend of living costs started downward in June and had continued that way ever since.

He concluded by stating that OPA's job was not to control profits but prices and that only when a company sought OPA approval of an increase in the prices it was charging would a demand for a profit statement be required.

Charges Fly over Power Line

A TELEGRAM from Representative Albert E. Carter, Republican of California, threatening "a rude awakening" for officials of the Department of the Interior for the "betrayal" of recommendations by a House committee against government construction of a West coast power line drew a vehement reply recently from Secretary Ickes.

Mr. Carter sought to make "a virtual gift" to a privately owned power company of a Federal power plant investment, Mr. Ickes charged, adding that it had cost taxpayers "many millions of dollars."

The exchange grew out of a telegram to the department from Mr. Carter attacking its known plans to use public funds for the construction of a Federal transmission line from the government's Central Valley power project in California. Mr. Ickes wrote that neither the fact that Mr. Carter is the ranking minority member of the House committee passing on his department's appropriations, nor "the threatening implications of your telegram," could keep him from doing his duty, and thus preventing the "virtual gift."

Probe of REA-NRECA Feud Planned

SENATOR Aiken, Republican of Vermont, reported last month that a Senate agricultural subcommittee had determined to "get to the very bottom of the controversy" between Administrator Harry Slattery of the Rural Electrification Administration and executives of the National Rural Electric Coöperative Association.

Aiken, a member of the subcommittee, said the inquiry, to be started late in September, was decided upon in the hope that "a clarification of the issues" might prevent damage to "the whole program of farm electrification."

Senator Shipstead, Republican of Minnesota, sponsored the resolution upon which the in-

quiry is to be based. It proposes an investigation to determine whether REA loan money is being used to finance insurance companies, whether any political or pressure groups are attempting to influence administration of the REA Act, and whether REA should be removed from the Department of Agriculture and reëstablished as an independent agency.

US Called Unfair

COMPLAINTS that the Federal government was, in effect, practicing a form of discrimination in the conduct of its own antidiscrimination drive among employers have been made to the Fair Employment Practices Committee, according to information gleaned from officials of that organization, it was reported recently.

The protests in question have been directed against the FEPC's own procedure, said to have been dictated largely from the White House, whereby charges of race discrimination against the government as an employer—which are said still to be numerous in Washington—are required to be conducted in closed executive session, whereas allegations against private employers are conducted in public.

The objections have reached the point where members of the FEPC may take the matter to the President and ask him to put both government and private employers in the same class and make them subject to the same procedures so far as conduct of the antidiscrimination drive is concerned.

The difference in treatment as between the Federal establishment and private concerns was discussed with some reluctance by officials of the FEPC after a session of the committee on August 9th. The Right Reverend Monsignor Francis J. Haas, newly appointed chairman, said the practice was established by the original committee when it was named more than a year ago and had lately been confirmed by the President's instruction to all department heads that government disputes henceforth were not to be carried on in public.

Power Consultant Appointed

APPOINTMENT of Alvin J. Wirtz of Texas, former Under Secretary of the Interior Department, as a consultant on power matters, was announced on August 7th by Secretary of the Interior Harold L. Ickes.

Mr. Wirtz has had twenty years of experience with private and public power developments, the Secretary pointed out in making public the appointment, and as general counsel assisted in the creation and organization of the Lower Colorado River Authority in Texas. While he was Under Secretary of the Interior in 1940 and 1941 he was directly in charge of the Bonneville Power Administration and the Bureau of Reclamation.

"I am sorry that Mr. Wirtz cannot give full time to the increasing power problems of the department," Secretary Ickes said, "but I expect to use him every minute he will make available to us in connection with the department's power program. I especially want his advice in connection with the plans and policies that must be formulated for the handling of power on the three hydroelectric projects in the Southwest which were turned over to this department recently by the President."

Douglas Wright, special representative of the Federal Works Administrator in charge of the Grand River dam project in Oklahoma, will continue to act as head of the agency for operating the facilities of the Grand River dam in Oklahoma and for selling the power when it becomes available at the Norfork dam in Arkansas, and the Denison dam in Texas, it was announced on August 5th by Secretary Ickes.

Under a presidential order of July 30th, Secretary Ickes was assigned the job of distributing the power from the three southwestern dams and making it available to "war plants and establishments, public bodies and cooperatives, and other persons," in the order named, with the ultimate purpose of providing a dependable market for such electric power and energy.

Alabama

Municipal Utilities Not Affected

A RECENT state public service commission order abolishing what the state body termed a 10 per cent "penalty" on electric company customers failing to pay bills by a given date does not apply to municipally owned utilities, the commission said recently.

Rates and regulations for city-owned plants are made by the municipal governing body or local boards, the commission statement said, and the state body has no control over them.

The commission's recent order affecting electric companies followed a general investigation into rate structures. A similar investigation was made of gas company rates, but no order has been issued.

Thirty-four cities in Alabama own and operate their own electric plants.

Utility to Boost Wages

THE Alabama Power Company has been directed to raise wages of approximately 1,000 employees in Birmingham, Jasper, Tallassee, Gadsden, Montgomery, and Selma in a War Labor Board order. The increase, retroactive to November 1, 1942, was given, the

WLB reported, to compensate the workers under the "Little Steel" formula for increased living costs.

The average hourly earnings for these employees, represented by the International Brotherhood of Electrical Workers (AFL), were 7.13 cents December 31, 1940.

The WLB said the company contended that an increase granted the workers January 1, 1941, should be credited against the "Little Steel" allowance, which limits raises to 15 per cent above the average straight time for January 1, 1941.

The board upheld the union's contention that increase was part of raises granted in December, 1940, and was not a "cost of living" adjustment which fell within the wage stabilization period covered in the formula.

Arizona

Power Rate Reduced

A REDUCTION of $175,000 per year in the electric rates charged by the Tucson Gas, Electric Light & Power Company was ordered recently by the state corporation commission. The order, issued by Commissioners Amos A. Betts and William Petersen, is effective September 1st, although retroactive on part of the reduction to January 1st.

Issuance of the directive brought to a conclusion a lengthy controversy between the utility and the commission. It began almost a year ago and at a hearing held in Tucson several months ago the commission expressed the belief the reduction would approximate $177,000.

However, it withheld filing of an order pending the presentation of a brief by the interested parties, which the commission said resulted in the fact that the original findings made by the commission were approximately correct.

The reduction was principally based on the use by the Tucson utility of electric power coming from Parker dam on the Colorado river.

RFC Requests New Tax Levy

A PETITION requesting the addition of at least $190,000 to the tax levy of Maricopa County Municipal Water District, No. 1, was filed early last month with the board of supervisors.

Louis B. Whitney, attorney for the Reconstruction Finance Corporation, filed the petition and said the amount was necessary if the water district is to meet payments on $265,000 in RFC bonds which he declared are partly due and unpaid.

Already the water district has been levied to the extent of $194,465 and Robert O. Beardsley, an official, said that if the $190,000 increase was made it would force 20,000 acres out of cultivation. Beardsley told members of the board of supervisors that the district is seeking agreement with the RFC on a refinancing program and expressed belief that the present levy will be sufficient if the refinancing program is carried out.

The board took the matter under consideration.

Publicity on Deal Urged

AN educational program to inform residents on all phases of the proposed purchase by the city of Tucson of the Tucson Gas, Electric Light & Power Company properties was recently recommended in a report to Mayor Henry O. Jaastad and the city council.

Eugene F. Durand, who was named July 6th by the council to negotiate between the power company's holding firm and city, urged the publication of leaflets describing the situation. Durand, in a report to the council early last month, charged that persons and interests "who are neither taxpayers of Tucson nor users of gas and electric power sold by the company" were trying to thwart the making of the purchase. He did not name either the persons or interests.

The educational program, Durand said, was doubly necessary due to what he described as outside interests at work in the state to prevent any municipalities from purchasing utility properties.

City Wins Action

CONSTITUTIONALITY of the Arizona law of 1940 authorizing municipalities to issue revenue bonds for the purchase of utilities was recently upheld by Superior Judge C. C. Faires of Globe in denying a request for an injunction to halt the sale of the Arizona General Utilities Company to the town of Thatcher.

A group of Safford property owners had sought the injunction at a hearing July 13th. Judge Faires, sitting for Superior Judge Benjamin Blake, had the motion under advisement until July 30th when he handed down his decision. The property owners had moved for the injunction on the grounds the law was unconstitutional.

After the ruling, the Robert E. Schweser Company of Omaha, Nebraska, advised counsel for the town of Thatcher that it was proceeding with the issuance of $465,000 in revenue bonds for the purchase of the utility which serves Safford, Thatcher, Solomonsville, Central, and Pima, as well as the northern section of the Sulphur Springs Valley Coöperative of the Rural Electrification Administration.

Tax Boost Planned

BIG increases in the 1943 taxable valuations of some state public utilities were proposed recently by the Arizona Tax Commission as it reached the half-way point in its annual session as a board of equalization.

The increase on the properties of the Central Arizona Light & Power Company in Phoenix was $1,000,000 and the utility had scheduled a hearing with the state board of equalization to enter a formal protest.

The largest increase, amounting to $2,198,119, was proposed for the El Paso Natural Gas Company of El Paso, Texas, which operates pipe lines in Cochise, Greenlee, Gila, Graham, Maricopa, Pinal, and Pima counties.

Other increases were Tucson Gas, Electric Light & Power Company, $1,200,000; Arizona Electric Power Company, Flagstaff, $50,000; Arizona Edison Company, on properties in Yuma, Cochise, Gila, and Maricopa counties, $485,000; Arizona Power Company, Prescott, $200,000; Winslow Gas Company, $25,000.

Arkansas

Seeks Lower Electric Rates

MAYOR Neely of North Little Rock said recently his first conference with Arkansas Power & Light Company officials for the purpose of requesting lower power rates for the city was unsuccessful. The mayor said he would confer with the company again in an effort to obtain a new contract which would begin with the expiration of the 30-year-old agreement in October.

The present rate is approximately nine-tenths of a cent for each kilowatt hour. Any reduction would be passed on to the North Little Rock consumers, the mayor said. The city last year paid the Arkansas Power & Light Company $115,542 for power delivered to the switchboard.

Last year's power bill, the largest in thirty years, was due to war industries and line extensions outside the city limits.

Utility Sale Protested

OVER the strenuous protest of Gus Walton, Little Rock investment broker, and his attorney, Willis Holmes, the Hot Springs city council last month adopted unanimously a resolution authorizing the legal department of the city to appear before the state utilities commission and protest the sale of the Hot Springs Water Company to Mr. Walton and associates.

The resolution, introduced by Alderman Samuel G. Smith, charged that the sale price was "based on fictitious and exorbitant valuations."

In discussion of the resolution members of the council pointed out that residents of Hot Springs and the city legislative organ had sought to buy the water company six years ago and that demands that the sale be consummated had increased.

Both Mr. Walton and Mr. Holmes said that, if the present deal were not interfered with, there would be written into the articles of purchase a clause preventing increase in water rates and also holding the door open for future sale of the water company to the city of Hot Springs.

A representative of the commission was expected to come to Hot Springs to conduct an independent investigation of the water company.

California

Trolley Pay Approved

THE state supreme court last month ruled that the wage raise voted Municipal Railway platform men by the San Francisco board of supervisors is in accordance with provisions of the city charter, thus empowering Controller Harold J. Boyd to pay the increase to the men.

Boyd immediately released checks for the differential between the old and the new scales for the period ending July 15th. He said that other checks for the period ending July 31st would be released on August 11th.

Since a taxpayer's suit was filed on June 29th by Wesley McKenzie, real estate man, the platform men have been paid at the old rate.

McKenzie's suit charged that the new scale, ranging from 85 cents an hour to 92½ cents for platform men and to 97½ cents for bus drivers, is in violation of the charter, which holds that city salaries must be in accordance with the prevailing rate paid in the comparable industries throughout the state.

The suit asked that Boyd be enjoined from paying the Municipal Railway employees the increase, which had been voted by the board of supervisors.

The matter was taken directly to the supreme court by Boyd, who retained Jesse Steinhardt as outside counsel, and City Attorney John J. O'Toole.

District of Columbia

Wage Increases Granted

INDIVIDUAL wage adjustments for Capital Transit Company employees, affecting garage, carhouse, track, and roadway workers, were approved recently by the War Labor Board.

In a 5-to-4 decision, the board allowed various increases requested by the company and by the Amalgamated Association of Street Electric Railway and Motor Coach Employees of America (AFL). The entire transportation department was included in the permission to adjust wages.

The WLB announced that a general wage increase of 5 cents an hour, agreed on by the company and the union, had not yet been finally approved and this question would be determined later.

Four members of the board, in a dissenting opinion, said they had disapproved the wage adjustments, "not because the proposal lacks intrinsic merit, but because we believe that action by the board on the entire matter should have been deferred, as requested by the Fair Employment Committee, pending a determination of the relation between the proposed adjustment and the charge that the Capital Transit Company is practicing race discrimination in employment."

Florida

Utility Property Sold

THE Engineers Public Service Company announced last month that it had sold the Key West Electric Company, a subsidiary, to the city of Key West for $1,160,000. It will realize about $710,000 from the deal, since Key West Electric had outstanding $409,000 of first mortgage 5 per cent bonds, which have been called for redemption, and 1,741 shares of preferred stock which have been paid. Key West has been dissolved and liquidated.

Georgia

Residential Rates Cut

THE Georgia Power Company was ordered last month by the state public service commission to give all residential consumers of electricity the same lower rates as those "earned" since 1939 by the larger users.

The order was issued by Chairman Walter R. McDonald after a conference between the commission and officials of the power company. It means, he said, a reduction in the company's revenues of $400,000 annually, and a corresponding saving to the smaller users of electricity.

The new schedule, he continued, would be applicable only to the Georgia Power Company, which serves 85 per cent of Georgia's consumers of current. He explained that the company, since 1939, has been operating under two sets of residential rates. The first was the immediate rate and the second an inducement rate, lower than the other, which could be "earned" by increased use of current.

The commission provided, McDonald said, that the inducement rate was to go into effect for all residential users when 80 per cent of consumers had earned it, or in about three years. At the end of three years, war conditions intervened to prevent the continued upswing in the use of current, and the commission postponed the adoption of the inducement rate.

However, it decided on August 11th, although only 50 per cent of the consumers have earned the inducement rate, to put it into effect for all on meter readings, beginning September 1st. McDonald said that the average consumer uses 1,600 kilowatt hours per month.

The commission also approved, due to war conditions, two alternate plans for meter readings. The company is to read meters only every two months. On the skipped month, they will make an estimate of current used for the previous two months. If the consumer desires, the company will mail him a return postcard on which he can report his own reading.

Indiana

Court Denies Appeal

THE long litigation over the Indianapolis gas utility was brought a step nearer the end last month when the United States Circuit Court of Appeals in Chicago overruled a petition for rehearing in cases contesting validity of the sale agreement whereby the city ac-

quired complete ownership of the utility property.

Early in June the court of appeals affirmed the decision in Federal court of Judge Robert C. Baltzell, Indianapolis, in which validity of the sale of property of the old Indianapolis Gas Company was upheld. Judge Baltzell was sustained in his ruling that the sale conformed with provisions of the mortgage that secured the bonds, that all bondholders were bound to the sale agreement approved by the majority, and that minority bondholders objecting to the sale were not entitled to recover either interest or damages.

It was regarded as likely that overruling of the rehearing petition will end the litigation, which has been under way since 1935, when the city exercised its right under terms of a public charitable trust to take over the utility property.

Kentucky

Electric Co-op Assessment Cut

REDUCED valuations at which Kentucky's 26 rural electric coöperatives will be assessed for taxation during their first two years of operation were announced by the state tax commission on August 13th. The commission ordered that the coöperatives' property be valued at the rate of $50 per mile of standard power line for state and local taxation during the first year of operation, $75 a mile the second year, and $130 a mile in subsequent years.

This represented a modification of the commission's May 26th order, which set the valuation rate for the property at $130 a mile for every mile of operation. All of the state's coöperatives will benefit from the reduced rates.

Court Denies Injunction

THE court of appeals at Frankfort on August 11th denied T. H. King, Corbin taxpayer, an injunction to require the Corbin city commission to appoint a utility commission to operate the city's electric and water plants.

The appellate court held the case should be brought to it on regular appeal.

King's petition charged it was the duty of Mayor Bert Rowland and Commissioners Ed Shotwell and Maynard Karr of Corbin to enact an ordinance creating a 3-member city utility commission, contending the mayor and commissioners were without power to handle revenue derived from electric and water plants.

Maryland

Judge Heads Transit Arbitrators

JUDGE Eli Frank, of the supreme bench of Baltimore city, was recently appointed chairman of the 3-man arbitration panel set up to handle grievances between the Baltimore Transit Company and the Amalgamated Association of Street, Electric Railway, and Motor Coach Employees, the War Labor Board disclosed.

The panel will replace Aaron Horvitz, of New York, who previously was designated by the WLB as the arbitrator of disputes which company and AFL officials were unable to dispose of themselves. In addition, the panel will examine the present grievance procedure, established by the WLB several months ago, and submit recommendations as to whether such procedure should be continued or modified.

The other panel members are Henry T. Douglas, of the Black & Decker Company, and John J. McDonald, of Washington, vice president of the AFL Operating Engineers' Union.

Minnesota

Agree on Pay Boost

WAGE increases which will raise the payroll of the Twin City Rapid Transit Company by between $700,000 and $800,000 annually have been agreed upon by the 3-man board arbitrating the wage dispute between the company and the union, it was learned recently.

The increases, retroactive to January 1st, will not be effective until the award has been approved by the regional War Labor Board in Chicago and by the War Labor Board in Washington.

D. J. Strouse, president of the company, said that the company would protest the award before the WLB in Chicago as being a violation of the "Little Steel" formula and the President's "hold the line" order.

The new contract, under the committee's award, provides for an increase of 5 cents an hour for all union employees, retroactive to January 1st. It provided an additional increase

of 3 cents an hour for all employees on the payroll July 1st, providing they continue to work for the company through next December 31st.

Missouri

Utility Conviction Upheld

THE United States Circuit Court of Appeals for the Eighth District on August 9th upheld the conviction of Union Electric Company of Missouri and its former head, Louis H. Egan, found guilty by a Federal court jury on February 22, 1942, of conspiring to violate the corrupt practices section of the Holding Company Act.

In a 6-week trial the government produced evidence to show that the company built up a $591,000 "political slush fund" during the 1930's and disbursed at least part of the money to public officials, politicians, and political candidates for offices ranging from governor to constable.

Judge George H. Moore assessed the maximum penalties, fining the company $10,000 on each of eight counts and sentencing Egan to two years in prison and fining him $10,000. Egan, former $60,000-a-year president of the company, has been free under $10,000 bond while the appeals were taken to circuit court.

Nebraska

Power District Upheld

THE state supreme court, in dismissing an action challenging the right of the Consumers Public Power District to operate in 13 counties in western Nebraska, held that the provision in the state constitution forbidding the state or any of its political subdivisions from purchasing or owning stock in a private corporation relates only to where this results in a partnership with private enterprise, and does not apply where the public corporation purchases all of the private company's stock.

The Consumers, a political subdivision of the state, bought for $6,800,000 the common stock of the Western Public Service Company, and has been operating all of its properties for more than a year. It financed the purchase by an issue of revenue bonds. Its attorneys had argued to the court that even if the constitution had been violated it was a situation that could not be unscrambled.

The court also held that even if the officers of the Consumers were guilty of misconduct in failing to carry out obligations of the Western in giving cities 90-day options to purchase or guarantee payment of outstanding municipal bonds, the remedy was otherwise than in a *quo warranto* action.

Reduced Fare Approved by Committee

FIVE-cent street car fare is on the way back to Lincoln lacking only approval by the city council and ratification by directors of National City Lines, Chicago, owner of the local transportation system.

This was said to mean a 40 per cent reduction under the present rate of 8½ cents or 3 tokens for 25 cents.

The proposed new rate structure calls for a 1-cent transfer charge. Officials estimated the transfer business at 10 per cent of the whole, meaning that 6-cent fares would apply only to one-tenth of the patronage.

The council's special committee approved the counter proposal 2 to 1. Also sitting in and participating, also approving, were Mayor Marti, Director Erickson, and City Attorney Kier. Details of the proposed franchise ordinance, which, according to the proposal, will be for twelve years and not the twenty-five years suggested by the traction ownership, were also worked out.

Although the occupation tax feature, on a sliding scale, promises more revenue than heretofore, Rees Wilkinson, member of the special committee, entered a dissenting opinion stating, however, that if he can name certain conditions he will approve. These being that the company agree to return its property for taxation at valuation shown in its balance sheet, more than $1,000,000, and that the people be given opportunity to vote on the franchise as proposed at the next city election.

Appointed to Power Body

EMIL WOLF, North Bend, and Dr. B. H. Baer, Ashland, last month were appointed by Governor Dwight Griswold to the Peoples Power Commission of Omaha in conformity with the provisions of LB 204, which was passed by the 1943 legislature.

"In making the appointments I am assuming that the city of Omaha will create the commission," the governor said.

The law provides for a 9-man board with the mayor of Omaha serving as a member and appointing six others from Douglas county. The governor appoints two from outside the metropolitan area which includes Dodge,

Washington, Sarpy, and Saunders counties. Wolf was appointed to the 6-year term and Dr. Baer to the 3-year term.

The power bill was passed by the state legislature with the emergency clause and did not become effective until August 29th.

Harold Kramer, general manager of the Loup River Power District, and one of the leading figures in the so-called Nebraska Little TVA, returned from Washington last month and said there probably would be no referendum of LB 204, the law setting up the Omaha Public Power Commission.

While in Washington, Kramer recently hinted a poll of popular sentiment might be demanded by those favorable to public ownership of power properties in Nebraska. Subsequently, however, he said the cost of an election would be from $5,000 to $10,000 and this had killed the enthusiasm of those who at first had approved.

Frank Heinish, chairman of the Omaha on Guard Committee, said recently the committee was circulating an initiative petition calling for enactment of an ordinance which would forbid, until approved by vote of the people, city acquisition of the Nebraska Power Company or appointment of a people's power commission under LB 204.

The petition calls upon the council to enact the ordinance. If the council refuses to enact the ordinance, the petition would have the proposed ordinance submitted to a vote of the people.

New York

Commission Postpones Hearing

THE state public service commission recently postponed from August 30th to September 13th the next hearing on the proposed merger of 7 Niagara Hudson Power Corporation subsidiaries into a single unit.

The first hearing was held in Syracuse on July 30th and since then various interested parties have expressed a desire to intervene in the proceedings, the commission said. To accommodate these and others, the commission decided to set the next hearing later than originally planned.

Quitting Utility Board

THE state public service commission announced recently the resignations of Gay H. Brown, chief counsel, and John T. Ryan, first assistant counsel, effective on November 1st.

Mr. Brown and Mr. Ryan will establish a law firm in New York city.

Mr. Brown, a former supreme court justice, has headed the commission's law department for seven years. Mr. Ryan has been trial counsel for the public service commission for twelve years.

Ohio

Petition Move Begun

A MOVE for an initiative petition to put the purchase of the Akron Transportation Company up to the voters at the November election was launched in Akron early last month. The step was taken after the city council, following strict party lines, voted 8 to 5 to delay for thirty days action on a proposal to study the feasibility of buying and operating the transportation system.

With the Republican majority of eight giving the five Democratic members little chance to "get anywhere" in the proceedings, the council also voted to name a special citizens committee to make a thorough study of all transportation problems.

Mayor George J. Harter asked for the immediate passage of the resolution authorizing a study of the feasibility of buying the company's usable properties. About 5,000 signers would be needed to get it on the ballot.

Oklahoma

REA Tax Concession Tested

A SCATHING legal attack was directed on August 11th against a new Oklahoma law which frees government-organized rural electrification projects from *ad valorem* tax assessments.

A district court petition, filed by Dave Cotton, Oklahoma City attorney, assailed the law as unconstitutional on five grounds, and described its passage by the last legislature as a "fraud" against the people.

The statute, which exempts the rural electrification coöperatives from *ad valorem* taxes and tacks on a 2 per cent gross receipts levy, was challenged on the following bases:

(1) That it does not impose equal taxation on those engaged in the same class of vocation; (2) that it arbitrarily and unreasonably discriminates against private utilities, as opposed to the cooperative enterprise; (3) that it is a revenue-raising measure which originated in the senate, rather than in the house as provided by the state constitution; (4) and (5) that it deprives citizens privately engaged in similar industry of property without due process of law, and of equal protection under the law—as guaranteed in the United States Constitution.

Lydia L. Rodgers, a real estate owner, was listed as the plaintiff in the suit lodged against the state tax commission, and demanding the law be declared invalid.

Cotton, who described the law as a "long step toward socialism and government ownership of utilities," declared that the measure would dig heavily into the tax revenues of the various state counties, removing completely the *ad valorem* burden on the electrification projects, and thereby overencumbering the tax obligations of other property owners.

He produced figures showing that rural electrification establishments in one county last year paid $17,000 in *ad valorem* taxes, while under the new law the gross receipts levy would bring in only $1,300.

Oregon

PUD Plan Vetoed

THE Toledo water, light, and power commission and city council, taking joint action at a regular council meeting last month, voted unanimously to recommend completion of the long-proposed municipal power system instead of joining in a public utility district with Lane, Coos, and Douglas counties.

Bonneville engineers and other electric power officials have been called in for conferences with the city to determine feasibility of joining the proposed 4-county PUD before any final action was taken, city officials pointed out.

City officials were disturbed recently after receiving their third "dun" from the public utility district serving that area for extra electrical charges since the PUD took over transmission lines in this area. The extra bills amount to nearly a 50 per cent increase in the regular city light bill, officials stated.

Under the West Coast Power Company, former power line owners, street lights and the city hall were paid in a lump sum after half the city street lights were discontinued, it was declared.

The district has been sending additional bills for the city hall, which houses the draft board and civilian defense headquarters, and last month tacked on an extra amount for the city fire siren on the fire station, it was explained, although these items were previously covered in the regular monthly light bill.

Pennsylvania

Electric Rates Cut

ELECTRIC rate decreases for some Pennsylvania Edison Company consumers in Cumberland and Berford counties and an increase for Blair county theater lighting, all effective October 1st, are provided in a new tariff filed by the company with the state public utility commission.

Consumers in Cambria, Huntingdon, Mifflin, Juniata, Franklin, and Perry counties are also affected by the new tariff, which increases rates for those with loads less than 5 horsepower, low load factors, and those with extremely low load and power factors.

Other rate decreases will be given those with consumption exceeding 1,500 kilowatt hours per month and those now billed under service classification 24 and 25.

Gas Rate Cut Ordered

THE Manufacturers Light & Heat Company, serving gas in western Pennsylvania and parts of Ohio and West Virginia, was ordered on August 11th to slash its rates and make reparations to 179,000 consumers for all increases charged from April 2, 1942.

The state public utility commission issued the order, giving the utility thirty days to reduce its rates to the April 1, 1942, level and sixty days to make reparations of an estimated $1,250,000 to the consumers.

The order would become final if exceptions are not filed with the commission within thirty days.

An agreement under which the Manufacturers Light & Heat Company will receive daily delivery of large quantities of gas from properties of the Chicago Corporation was recently consummated. A minimum delivery of 50,000,000 cubic feet of gas and maximum delivery of 100,000,000 cubic feet per day will begin as soon as pipe-line facilities are available.

The arrangement is not expected to become operative until after the war. The contract runs for thirty years.

South Carolina

Rural Lines Reach New High

SOUTH Carolina had 77,848 "customers" for rural electric lines at the close of the fiscal year which ended June 20th, and they were being served by 17,583 miles of rural lines. Both totals are the largest the state has ever had.

These figures are shown in the annual report of the electrical utilities division of the state public service commission, recently released.

In spite of war-time restrictions on the construction of new lines, a total of 199 miles of new lines were completed during the year, and the number of customers increased by 958 over the previous fiscal period.

Although the several coöperative electric associations over the state have the greatest mileage of rural lines, the lines of the privately owned utilities serve the most customers. The commission's report shows that the co-ops are operating a total of 9,796 miles of lines, and are serving 27,344 customers, and that the privately owned utilities have 6,698 miles of lines which serve 43,244 customers.

Tennessee

NES Reports

ELECTRIC power consumption during July was the largest of any single month in Nashville, it was shown recently in the report of J. E. Carnes, general manager of Nashville Electric Service, submitted to the power board at its monthly meeting.

Sales for all purposes reached 32,143,218 kilowatt hours, an 8.72 per cent increase over July, 1942. Revenues from these sales totaled $412,405, an increase of 6.61 per cent over July, 1942.

The power report showed that the average price paid for all kilowatt hours used in Nashville in July was 1.28 cents. The same month one year ago this figure was 1.31 cents.

Nashville Electric Service had 62,777 active meters in service at the end of July.

Operating revenue deductions included $215,626 as operating expense, of which $132,512 was for power purchased from TVA; renewals and replacements, $38,343; cash appropriated for bond redemption, $54,166; tax replacement, $31,086.

Court Overrules Objection

THE second U. S. Circuit Court of Appeals last month overruled an objection of Samuel Okin, New York attorney, to the sale, made this spring, of the West Tennessee Gas Company to the Equitable Securities Corporation of Nashville.

Circuit court approval of the sale resulted from a recent suit by Okin, who owns 9,000 shares of Electric Bond and Share Company, which in turn owns a large percentage of the stock of the National Power & Light Company, the former owner of the gas company. Okin objected to the sale, but the court, in effect, overruled him.

Washington

Power Czar Opposed

THE Columbia basin and national legislative affairs committees of the Spokane chamber of commerce last month expressed opposition to the Dirksen bill, now pending in Congress, which would create a Federal power administrator.

The groups voted opposition to the measure on the grounds, they said, that it carried no provisions for local self-government in any project and proposed a centralized authority.

Wisconsin

Moves to Negotiate for Utility

EFFORTS have been launched to open direct negotiations with the American Light & Traction Company for municipal acquisition of the Madison Gas & Electric Company, City Attorney Harold E. Hanson and Harold M. Wilkie, special counsel, disclosed last month to the subcommittee which is negotiating the proposed acquisition.

Submitting a "temporary" report on their visit to the Securities and Exchange Commission in Philadelphia early last month, Hanson and Wilkie disclosed they had requested an interview with A. B. Munsell, Chicago, vice president of the holding company.

The Latest Utility Rulings

Accounting for Price of Secondhand Main

THE New York commission, on rehearing, has reaffirmed its decision that the difference between the purchase price of a gas main abandoned by a natural gas company and the original cost to that company should be taken as the depreciation in making journal entries on the books of a purchasing company supplying artificial gas. The commission in *Re* Cabot Gas Corp. and Rochester Gas & E. Corp. (NY 1943) 48 PUR(NS) 110, had held that the difference between the purchase price of $100,000 and original cost of capital of $314,738.46 was the proper measure of depreciation.

On rehearing the company introduced evidence as to assessed valuation, authorized enlargement of plant capacity, offers to serve additional territory, and potential use of the line. None of the evidence nor all of it together, the commission held, was of such a character or of sufficient weight to change the conclusion reached in the original opinion. Commissioner Burritt, speaking for the commission, said:

> It is perhaps superfluous to remark that the public service commission cannot be governed either in valuation or accounting procedure by valuations for tax purposes made on utility property by local tax district assessors. If in fact the tax burden is oppressive, as a result of the high assessments, the result is rather to depress the real value of the property, not to raise it. This is the only inference relevant to the proceeding which can be drawn from the evidence on assessments.

Evidence as to increased plant capacity (work in progress) was held to have no direct bearing on the issue. Any use of the line to serve a new territory, where an application was pending for discontinuance by another company, was said to be a future use not concerning the question at issue.

Chairman Maltbie, in a concurring opinion, said that the substance of the company's proposal was that it be permitted to show among its assets an account amounting to $178,860.10 which represented no investment and no amount of money actually paid by the company. Although the property acquired originally cost *another* company nearly $315,000, that company had ceased to operate the property as a *natural* gas system and had sold its property to be used for another purpose for $100,000. This transaction was arm's-length bargaining. *Re Cabot Gas Corp.* and *Rochester Gas & Electric Corp. (Case No. 10549).*

All Taxes and Provision for Postwar Adjustments Allowed As Expense

A PETITION by the city of Detroit for a reduction in rates of the Detroit Edison Company was dismissed by the Michigan commission upon a finding that rates were reasonable since they did not exceed 5 per cent upon the fair value of the property. A contention that only a "proper and just proportion of taxes imposed by the 77th Congress" should be included as operating expenses for rate-making purposes was disapproved, the commission holding that it had no power

to proportion taxes. Under the income tax law, it was pointed out, any industry can avoid taxes by making less money. A free exercise of this alternative, however, would unquestionably lessen industrial activity. In order to avoid any part of the income tax, it would be necessary for the revenue producer to give up a part of his income. The commission continued:

> Under the laws of the state of Michigan, a regulated utility is entitled to earn a fair return upon the present value of the property devoted by it to public service. Money that has been lawfully spent in rendering service constitutes no part of such a return. The dollar paid out for taxes is no more available as income and return than a dollar spent for labor or any other legitimate expense.
>
> We have repeatedly stressed the fact that we are a statutory body and possess only the powers conferred upon us by statute. We know of no statute giving us the power to forbid a company the right to charge as an operating expense any tax lawfully incurred by it. . . .
>
> We therefore find that all taxes are a proper operating charge and they will be so considered in determining the income of the company in this case.

The company had made large appropriations to depreciation reserve and a postwar adjustment reserve. An alternate policy, said the commission, would be the reduction of rates to a point that would prevent the accumulation of such reserves. Under such a policy the financial ability of utility companies to meet the reconstruction problems that will follow the war would be in constant doubt. Ratepayers in many instances would find themselves in the position of enjoying unwarranted low rates at a time when they are most able to pay and high rates in a subsequent period when they may be least able to pay—a condition not consistent with good regulation.

The commission was of the opinion that for the future the steam-heating system and the electrical system of the company, not being physically interdependent one upon the other, should be treated as separate and distinct utilities.

A noncontributory pension plan proposed by the company was also considered.

The commission did not believe that for rate-making purposes the cost of providing for a pension upon salaries or wages exceeding $3,000 a year should be charged to operating expense. *City of Detroit v. Detroit Edison Co. (D-1722).*

War Tax Involved in Rate Reduction Order of Communications Commission

LOWER rates for communications between various points in the United States and various points in the West Indies, Central America, and South America were ordered by the Federal Communications Commission in a case in which a return of 6½ per cent was allowed. Numerous rulings were made on questions relating to operating revenues and expenses, including questions of accounts uncollectible because of war and other nonrecurring items, taxes, and apportionment.

The company's accrual on its books for Federal income and excess profits taxes for 1941 totaled $1,298,000, of which $718,000 was for excess profits tax, the remainder being for the combined normal income tax and surtax. On the basis of the Federal income tax return filed by it the company's actual Federal tax expense attributable to the year 1941 was less than the amount accrued because of its use of a return consolidated with other affiliated companies with respect to excess profits tax. In addition, for the purpose of determining whether earnings were excessive and whether a rate reduction should be required, the commission allowed the amount of the company's Federal normal income tax and surtax for 1941 to be deducted as an operating expense. Concerning taxes, the commission said:

> In determining the amount of the rate reduction, however, we have regard to the

fact that such amount of income tax should be modified for the purposes of this report by reason of the adjustments in net revenues herein found, and because of such decrease in income as may result from the rate reduction.

The amount of rate reduction determined herein will so reduce All America's revenues that it will have little or no liability for Federal excess profits tax. However, any amount All America may have to pay for Federal excess profits taxes should not be deducted in determining the amount of All America's net income available for rate reduction. The Federal excess profits tax is a tax imposed because of the requirements of the war emergency. Such abnormal tax burden should be borne by the utility. In this costly war, All America is involved equally with all other businesses and taxpayers. To permit the charging of rates on the basis of recovering a sufficient amount to meet the excess profits tax in addition to earning a fair return would result in an inflationary spiral which would be contrary to the national policy against inflation. It may be added that any attempt to establish charges on the basis of the requirements of the Federal excess profits tax law would result in singling out the ratepayer for the imposition of the burden of this tax, with a wholly disproportionate gain to the utility.

The commission discussed at considerable length the classifications and rate structure for telegraph service between the United States and Latin America and the principles for adjustments of charges for this service. Consideration was given to the question of the land-line factor for Latin American traffic. Uniformity was sought and discriminatory classifications were required to be eliminated. *Re All America Cables & Radio, Inc. et al. (Docket No. 6046, T-29).*

Mutual Telephone Company Required To Serve Nonmembers

TELEPHONE service was ordered by the Wisconsin commission for the occupant of a residence adjacent to a highway along which lines of a mutual telephone company were strung, notwithstanding the policy of the company of serving only members. This policy had been adhered to upon the theory that the company was not a public utility and, therefore, not obligated to serve anyone except members.

The commission held that the company was a public utility under the ruling in Commonwealth Teleph. Co. *v.* Carley, 192 Wis 464, PUR1927C 164, 213 NW 469. In that case a number of so-called "roadside" or "switched" telephone companies were held to be public utilities subject to the regulatory authority of the commission. It did not appear from the record in the Carley Case that the facilities of the switched companies were available for furnishing any long-distance service. The record in the instant case showed that such facilities were available and that, practically speaking, any telephone user in the state might communicate by means of those facilities with the subscriber of the company and vice versa. The commission thought that this fact was sufficient to make the doctrine of Schumacher *v.* Railroad Commission, 185 Wis 303, PUR1925C 228, 201 NW 241, inapplicable to the question of the public utility status of the company. The commission said:

> To hold otherwise would mean that practically every mutual "roadside" telephone company in this state is not a public utility, and that the rates and service of such companies are not subject to regulation, in spite of the fact that the entire telephone-using public of the state is more or less dependent upon the service of such companies for telephone communication. Ever since the decision in the Carley Case, above cited, such mutual companies have, without exception, complied with the requirements of the public utility law by filing annual reports, have uniformly filed their rates with the commission, and have not attempted to change their rates otherwise than by the approval or authority of the commission. We think that this practice constitutes such a general recognition of the public utility status of all such companies that there can now be no question as to that status.

Being a public utility, the company had an obligation to furnish service to any member of the public within the undertaking of service and this undertak-

ing would include a residence adjacent to its line.

Some question had arisen as to whether the company had forfeited its charter by reason of failure to file reports as required by law. This fact, however, the commission held, could not operate to change or alter the obligation of the company with respect to furnishing service.

The company, moreover, could not lawfully nor reasonably deny service to the applicant upon the ground that he was not a member or stockholder, although the filed rates indicated an attempt to operate virtually on a nonprofit basis. The applicant, it was held, was entitled to receive service at the utility's present lawfully filed rates, but the commission indicated that the utility might revise its rates as the result of serving nonstockholders. *Re Meehan Telephone Co. (2-U-1902).*

FPC Denial of "Fair Value" Appraisal of Power Project Upheld

NOTWITHSTANDING a provision in a license issued by the Federal Power Commission in 1921 for the determination of the fair value of a project at Niagara Falls, the United States Circuit Court of Appeals, Second Circuit, has upheld an order of the commission based on a ruling that the Niagara Falls Power Company is not entitled to a "fair value" appraisal instead of an original cost determination. The project had been undertaken under Federal authorization prior to the enactment of the Federal Water Power Act in 1920, which authorization had expired. The company had also obtained rights from the state of New York.

Admittedly the former commission at the time the license was issued in 1921 supposed that the case fell within the proviso of §23 (a) of the Federal Power Act, but the court ruled that the commission was mistaken. The court did not interpret the act as excluding from the original cost provision of § 4(b), interpreted in the light of §§ 3(13) and 14, a project holding a permit, right of way, or authority from the state.

As to the question whether the court and the present commission should follow the interpretation of the earlier commission, the court said:

> In spite of the plenitude of discussion in recent years as to how far courts must defer to the rulings of an administrative tribunal, it is doubtful whether in the end one can say more than that there comes a point at which the courts must form their own conclusions. Before doing so they will, of course—like the administrative tribunals themselves—look for light from every quarter, and after all crannies have been searched, will yield to the administrative interpretation in all doubtful cases; but they can never abdicate. Even Gray *v.* Powell, 314 US 402—a case which perhaps went as far as any other—left no doubt as to this. Mitchell *v.* United States, 313 US 80, 97. Be that as it may, the case at bar is different from the usual one in two important respects: (1) There was no customary interpretation, but only a single instance; and (2) the tribunal has reversed itself. The conventional reason for the deference exacted from courts for such rulings has always been the advantage possessed by such tribunals in a background of specialized experience and understanding, gathered from a long acquaintance of the members with the subject matter, either while they are in office or before. The continuity of this experience is assumed to build up an acquaintance inaccessible to others—courts included. If so, a single ruling, made shortly after the tribunal has been set up, should have far less weight than a series of repeated rulings over a course of years. And when that isolated instance is repudiated by the same tribunal in the light of its added experience, it has scarcely any weight at all. Indeed, the very reason which forbids a court from lightly overruling an administrative ruling, *a fortiori* forbids its undertaking to say that a later ruling is mistaken when it reverses the earlier one. We must assume that continued occupation with the subject has disclosed the past error better than we can do ourselves. We conclude therefore that the petitioner has no right to the appraisal of the "fair value" of its "project" as of March 2, 1921.

After holding that the company had no

right to a "fair value" appraisal, the court analyzed the provisions of the applicable sections of the Federal Power Act and concluded that original cost to companies which had combined, rather than any alleged "purchase" price involved in the combination, should prevail. A majority of the court was of the opinion that the actual legitimate original cost cannot be the price paid by the buyer of a going plant because that must inevitably include prospective revenues. Circuit Judge Augustus N. Hand, in a concurring opinion, placed his affirmance on the ground that in view of relationships between the combined companies there was no actual "purchase." He did not believe that "original cost" should be limited to the cost to the first investor in a power project.

The court disagreed with the commission's treatment of nonproject lands, holding that they should not be included within the "net investment" of the project but should be treated as though they were not owned by the company at all. The profit, therefore, should not have been included in the investment because the lands themselves should not have been. *Niagara Falls Power Co. v. Federal Power Commission,* affirming, except as to inclusion of nonproject lands, *Re* Niagara Falls Power Co. (Fed PC 1942) 44 PUR(NS) 291.

Increase in Gas Rates Allowed

THE Eastern Indiana Gas Company was allowed to increase its natural gas rate from $1.05 per thousand cubic feet to $1.27 by the state public service commission, boosting the utility's return from 1.93 per cent to 5½ per cent. The order was written by Commissioner Stuckey with one colleague concurring in result only, and the other not participating. The increase is contingent upon the company obtaining additional supply. Stuckey disagreed with the Office of Price Administration argument that only normal (1939, Federal taxes should be allowed as operating expense—extra war taxes to be charged against return. Commissioner Stuckey said the law did not allow such a decision and expressed the opinion that earlier decisions to that end (dating back to World War I) were unsound. He noted also in that period utilities were being permitted to earn and were earning a rate of return of 8 per cent, compared with 4½-6 per cent now.

Taxes were said by Commissioner Stuckey to be in the same category as costs of labor, materials, and supplies. He continued:

> If we draw the line on taxes then it logically follows that we must draw a line, likewise, on all other items of expense which utilities must pay in order to operate. Therefore, in that case, all increase in expenses for materials, supplies, and labor incurred because of the war would have to be denied as a part of the just charges against operating expense and considered as a part of the utilities' reasonable return. If that were done only harm could result to all parties involved.

Re Eastern Indiana Gas Co. (Order No. 15381).

Sale to City Ends Litigation and Destructive Competition

APPROVAL was granted by the Tennessee commission of a sale of the facilities of Tri-City Utilities Company to the city of Jellico, Tennessee, although the commission noted that the approval or consent of the state, of the commission, or of any other agency of the state is not requisite for the sale or other disposition of the property of any public utility to any county, municipal corpo-

ration, or any subdivision of the state.

The Public Utility Act, however, does not prohibit the commission from granting its approval, if it sees fit to do so, regardless of its jurisdiction, and the commission thought that approval was in the public interest since there was a pending cause in chancery court charging the company with violation of the statute prohibiting discrimination, and termination of this controversy was involved in the transaction. The commission had been advised that the company had corrected the discriminatory practices, and it included in its approval order a provision for withdrawing the complaint against the company.

The company and the city had been in competition under conditions which were not conducive to economy and efficiency of operations. The city had gained the bulk of the residential business, but the company had been able to retain a valuable business with a number of commercial and industrial establishments, and also had a valuable business in the county outside of the city. Consummation of the sale would end a period of destructive competition which inured to the advantage of neither party involved. This, said the commission, was a public benefit of considerable consequence. Any benefit which might be derived from the imposition of penalties for the alleged discrimination was said to be minor in comparison. *Re Tri-City Utilities Co. et al. (Docket No. 2628).*

Other Important Rulings

THE Pennsylvania commission, it has been ruled, does not usurp any municipal power or function in considering and acting upon a joint petition of a city and two railroad companies to approve contracts relative to the abandonment of service. *Crown Products Co. v. Public Utility Commision, 32 A(2d) 305.*

The Colorado commission held that authority to conduct motor carrier operations should not be granted if existing service is adequate or can be made so, notwithstanding that the proposed service would be offered at a cheaper rate. *Re Hill (Application No. 5875-B, Decision No. 21068).*

The state commission does not have jurisdiction to require railroads to furnish caboose cars for train crews, according to a ruling of the supreme court of Indiana. *Chicago & Eastern Illinois R. Co. v. Public Service Commission et al. 49 NE(2d) 341.*

A customer should not be permitted to participate in the ownership of a telephone circuit for the purpose of reducing the cost of service to him, by avoiding a mileage charge, according to the Missouri commission. *Bragg v. Huntsville Teleph. Co. (Case No. 10,327).*

The supreme court of Vermont held that where a transaction involving the purchase of the properties of a motor carrier is subject to the Motor Carrier Act, no part of such transaction may be lawfully consummated without the prior approval of the commission. *Zabarsky et al. v. Flemings et al. 32 A(2d) 663.*

A mere showing of disparity between intrastate rates in one state and intrastate rates in adjacent states on a given commodity does not, of itself, prove unlawful discrimination, according to a ruling of the Louisiana commission. *New Orleans Joint Traffic Bureau v. Arkansas & Louisiana Missouri Railway Co. et al. (No. 3750, Order No. 2957).*

NOTE.—The cases above referred to, where decided by courts or regulatory commissions, will be published in full or abstracted in *Public Utilities Reports.*

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COMPRISING THE DECISIONS, ORDERS, AND RECOMMENDATIONS OF COURTS AND COMMISSIONS

VOLUME 49 PUR(NS) NUMBER 3

Points of Special Interest

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TITLES

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KENTUCKY PUBLIC SERVICE COMMISSION

Re Western Kentucky Gas Company

[Case No. 1058.]

Rates, § 181.1 — Increase during war — Formal intervention by Federal official — Necessity.

1. The Commission has the duty to give consideration to the Congressional Act of October 2, 1942, amending the Stabilization Act, and the President's Executive Order No. 9328 of June 8, 1943, generally known as the "Hold the Line Order," directed at the stabilization of rates, even though there is no intervention by the Office of Price Administration, p. 129.

Rates, § 181.1 — Increase during war — Showing required — Impairment of service.

2. No increase in utility rates should be allowed during a war emergency under existing circumstances and the expressed policy of the Federal government unless and until it is shown that service to the consumer would be impaired if the application for an increase were not granted, p. 129.

[July 16, 1943.]

APPLICATION *by gas company for authority to increase rates; motion by applicant for order fixing amount for bond so that proposed rates could be put into effect immediately denied and original application denied.*

By the COMMISSION: On September 25, 1942, the Western Kentucky Gas Company filed before this Commission its application for authority to put into effect a system-wide rate schedule and to increase rates to be charged its consumers, in accordance with a proposed revised schedule filed with the application, made a part thereof, and marked "Exhibit 'A.'"

In due time thereafter, the cities, towns, and all interested parties, including the Office of Price Administration, were duly notified of the pendency of the application and that a hearing would be held thereon on December 8, 1942. At said hearing evidence was offered by the applicant, and at an adjourned meeting held in Owensboro, Kentucky, on December 29, 1942, additional evidence was heard. Thereafter briefs were filed by the parties, and oral argument was had.

[1, 2] On June 15, 1943, the Commission having considered the application and record, in the light of the Congressional Act of October 2, 1942, amending the Stabilization Act and in view of the President's Executive Order No. 9328 of June 8, 1943 (generally known now as the "Hold the Line Order"), the Commission notified all interested parties that: "It is the view of the Commission that under existing circumstances and

the expressed policy of the Federal government, this is not an appropriate time to inaugurate increases in rates."

Upon receipt of said notice, applicant requested, and the Commission granted, an informal conference, which was held at the offices of the Commission on June 29, 1943. Applicant and one of the protestants were represented by counsel, and Mr. Arnold Hirsch of the Office of Price Administration was present. Counsel for applicant filed motion requesting the Commission to enter an order fixing an amount for bond which applicant desires to execute under § 278.190, Kentucky Revised Statutes, so that it could put into effect immediately the proposed new rates.

Counsel for applicant pointed out that the Office of Price Administration had not availed itself of its right to intervene, except by correspondence, which is filed in the record, and that, therefore, the Commission was not called upon to consider the Act of Congress of October 2, 1942, or the "Hold the Line" order of the President of June 8, 1943. To this the Commission cannot agree. The President's Executive Order No. 9328 is directed specifically to regulatory bodies such as this. Article No. 4 of that order is as follows:

"The attention of all agencies of the Federal government, and of all state and municipal authorities, concerned with the rates of common carriers or other public utilities, is directed to the stabilization program of which this order is a part so that rate increases will be disapproved and rate reductions effected, consistently with the Act of October 2, 1942, and other applicable Federal, state, or municipal law, in order to keep down the cost of living and effectuate the purposes of the stabilization program."

We do not consider it necessary under the congressional act or the President's "Hold the Line" order to have formal intervention by the Office of Price Administration. We think it is our duty to give consideration to the congressional act and the President's order even though there is no intervention by the Office of Price Administration.

In normal times the record made by applicant might entitle it to favorable consideration. That we do not now decide. However, times are not normal. A war emergency exists that affects the whole nation; and we do not believe that, under existing circumstances and the expressed policy of the Federal government, an increase should be allowed in utility rates unless and until it is shown to this Commission that service to the consumer would be impaired. This record does not affirmatively or otherwise show that the service furnished to the consumer would be impaired if the application is not granted.

Therefore, it is *ordered,* that the motion filed by applicant on June 29, 1943, hereinabove mentioned, is overruled; and the original application herein is denied.

Re Commonwealth & Southern Corporation

[File No. 70-632, Release No. 4223.]

Security issues, § 13.3 — Alteration of stockholders' rights — Dividend payments.

A declaration filed by a registered holding company regarding reduction of stated capital behind preferred stock, in order to facilitate payment of dividends, was not permitted to become effective since it would be against the public interest that this stock should be "tinkered with" while the Commission's order requiring recapitalization on a one-stock basis was outstanding.

[April 7, 1943.]

DECLARATION *filed by registered holding company regarding reduction in stated capital behind preferred stock in order to facilitate payment of dividends; declaration not permitted to become effective.*

APPEARANCES: John C. Weadock, George Roberts, Attorneys, and Winthrop Stimson, Putnam & Roberts, Counsel, for the Commonwealth & Southern Corporation; John W. Christensen, for the Public Utilities Division of the Commission.

By the COMMISSION: Commonwealth & Southern Corporation ("C&S") is a registered public utility holding company. Its management wishes to pay a dividend of $2 on the preferred stock of the company and to make certain dividend payments thereafter. The directors have refrained from declaring and paying the dividend, not because of any obstacle created by this Commission or the Public Utility Holding Company Act of 1935, but because they say they fear stockholders' suits.

C&S is a Delaware corporation, and its directors cannot pay dividends if its capital (computed in accordance with Delaware law) is less than—

"the aggregate amount of the capital represented by the issued and outstanding stock of all classes having a preference upon the distribution of assets." (Delaware Gen. Corp. L. § 34)[1]

They have been advised by counsel

[1] That section provides in full:

"The directors of every corporation created under this chapter, subject to any restrictions contained in its certificate of incorporation, shall have power to declare and pay dividends upon the shares of its capital stock either (a) out of its net assets in excess of its capital as computed in accordance with the provisions of §§ 14, 26, 27, and 28 of this chapter, or (b), in case there shall be no such excess, out of its net profits for the fiscal year then current and/or the preceding fiscal year; provided, however, that if the capital of the corporation computed as aforesaid shall have been diminished by depreciation in the value of its property, or by losses, or otherwise, to an amount less than the aggregate amount of the capital represented by the issued and outstanding stock of all classes having a preference upon the distribution of assets, the directors of such corporation shall not declare and pay out of such net profits any dividends upon any shares of any classes of its capital stock until the deficiency in the

that any question as to the legality of the dividends under Delaware law may be avoided by reduction in the stated capital of the outstanding preferred stock. Accordingly, C&S has filed a declaration respecting a proposal to reduce that capital from $100 to $10 per share. A condensed balance sheet, per books and pro forma, follows: [page 133].

The preferred stock has a cumulative dividend right of $6 per share, dissolution preference of $100 per share plus accrued dividends which at September 30, 1942, amounted to $24.75 per share, and a redemption value of $110 per share. It is not proposed to alter these or any other features of the preferred and common stocks and debt. No change is proposed in the earned surplus or common stock accounts. While the stated capital for preferred stock is to be reduced from $150,000,000 to $15,000,000, a reduction of $135,000,000, the common stock will remain stated at $168,366,640 and earned and paid-in surplus are to remain unaltered at an aggregate of $953,781.[2]

It is proposed that the resulting capital surplus of $135,000,000 shall not be used for the payment of dividends on or repurchase of common stock, or to repair any deficit in earned surplus resulting from such dividends or repurchase. No use will be made of the capital surplus which reduces it to an amount less than $90 per share of preferred stock; and no change in these restrictions will be made without the approval of 60 per cent of the preferred stock. The reduction proposal itself will not be adopted unless it is approved by a majority of the outstanding shares of stock—including a majority of the preferred.

C&S has insisted that the only issue before the Commission is whether dividends shall be paid on the preferred stock. It will pay the dividends it the declaration becomes effective and, if not, "the chances are overwhelming" that dividends will not be paid.[3]

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amount of capital represented by the issued and outstanding stock of all classes having a preference upon the distribution of assets shall have been repaired. Subject to any restrictions contained in its certificate of incorporation, the directors of any corporation engaged in the exploitation of wasting assets may determine the net profits derived from the exploitation of such wasting assets without taking into consideration the depletion of such assets resulting from lapse of time or from necessary consumption of such assets incidental to their exploitation.

"Nothing contained in this section shall prevent the stockholders of any corporation, or the directors thereof if the certificate of incorporation shall so provide, from setting apart out of any of the funds of the corporation available for dividends a reserve or reserves for any proper purpose or from abolishing any such reserve in the manner in which it was created.

"A director shall be fully protected in relying in good faith upon the books of account of the corporation or statements prepared by any of its officials as to the value and amount of the assets, liabilities and/or net profits of the corporation, or any other facts pertinent to the existence and amount of surplus or other funds from which dividends might properly be declared and paid."

[2] C&S has expressed a willingness to write down the common stock from $5 to 50 cents per share if the Commission desires it.

[3] Although C&S states the issue as exclusively whether dividends should be paid, it has not filed applications or declarations respecting such payment. Indeed, it claims that § 12(c), 15 USCA § 79*l*(c), is inapplicable and that it need not file thereunder by virtue of Rule U-46. Section 12(c) makes the declaration or payment of a dividend (of a system company) unlawful unless it complies with rules, regulations, and orders deemed necessary to safeguard "financial integrity," "working capital of public utility companies" to prevent "payment of dividends out of capital or unearned surplus," or to prevent the circumvention of the act or "rules, regulations, or orders thereunder." Rule U-46 exempts from this section dividends paid out of earned surplus.

That cannot be the issue. The question whether to pay or withhold dividends is not before the Commission; it is a question for the management. What C&S's directors are in fact asking is that we approve a book reduction which, it is hoped, will immunize them from suit if dividends are paid. We are required by the act to pass on the proposed reduction. We do not decide whether a dividend shall be paid.

In our consideration of this case we shall deal first with the reasons advanced by the management in support of its proposal to reduce preferred capital.

The litigation, which the management fears, would be based, according to the management, on the theory that the assets are worth less than the present stated capital of the preferred stock, $150,000,000, after allowing for liabilities ahead of the preferred. This theory would imply that the capital surplus of $127,782, the earned surplus of $825,999, the common capital stock of $168,366,640 and a reserve of $15,100,000 for possible loss on liquidation of Tennessee Electric Power Company would all be used up and the stated value of the preferred impaired. But the management immediately and emphatically asserts

THE COMMONWEALTH & SOUTHERN CORPORATION
Condensed Corporate Balance Sheet
September 30, 1942

Assets		Per Books	Pro Forma
Investments:			
Investments in and loans to subsidiary companies	$330,649,780		
Investments in other companies	25,506	$330,675,286	$330,675,286
Current Assets:			
Cash	$10,937,135		
U. S. Government and Federal agencies securities	1,449,100		
Other	103,537	12,489,772	12,489,772
Deferred Charges		2,814,581	2,814,581
Total Assets		$345,979,639	$345,979,639
Liabilities			
Preferred capital stock, cumulative $6 series, voting, no par value, dissolution preference $100 and redemption value $110 per share, issued and outstanding 1,500,000 shares—stated value *		$150,000,000	$15,000,000
Capital surplus arising from reduction of capital of preferred stock from $100 per share to $10 per share			135,000,000
Common capital stock, no par, issued and outstanding 33,673,328-71/1200 shares—stated value		168,366,640	168,366,640
Option warrants—entitling holders to purchase common stock at $30 per share—issued and outstanding 17,588,956—373/1200 warrants.			
Long-term debt—Instalment notes payable to banks, interest 2½%, due semiannually to September 6, 1949		11,300,000	11,300,000
Current liabilities		259,218	259,218
Reserve for possible loss on liquidation of Tennessee Electric Power Company		15,100,000	15,100,000
Capital surplus paid-in		127,782	127,782
Earned surplus		825,999	825,999
Total Liabilities		$345,979,639	$345,979,639

* Cumulative dividends in arrears and not declared or accrued at September 30, 1942, of $24.75 per share, exclusive of fractional scrip, amounted to $37,116,609.75.

its firm opinion that the assets are worth more than $150,000,000 plus liabilities.

It is stated by the management that if original cost of subsidiary properties is used as a basis of measuring the value of C&S's holdings, the capital represented by the preferred is impaired. But the management in the same breath insists that original cost alone of the underlying properties is not a proper measure of value of a holding company's investment account and refers us to no decision holding that it is.

It is pointed out by the management that the market values of C&S's preferred and common stock (which, on January 30, 1943 were approximately $63,000,000 and $16,000,000 respectively) are less than the amount of capital stated for preferred stock. But the president of C&S also states that, in his opinion, the market value of C&S stock is "not conclusive" as to the value of its assets.

It is stated by the management that the order of this Commission limiting C&S to one class of stock created the impression that the Commission did not believe C&S to be "a good enough company" to have preferred stock and that the order had "a depressing effect." But C&S's management must admit that we did not, in our opinion attached to that order, nor have we at any time, issued any findings as to the value of C&S's holdings. On this point a statement in the March 31, 1943 opinion of the circuit court of appeals for the third circuit, 134 F (2d) 747, 48 PUR(NS) 72, 83, affirming our order under § 11(b)(2) of the act, 15 USCA § 79k(b)(2), is worthy of note. The court said that the issue in that case "did not require a valuation of the system's property and we think that the Commission did not err in refusing to enter into the consideration of that question at this stage of the proceeding."

Thus it appears that every reason advanced by the management as giving rise to its fears is likewise described by the management as invalid. They have set up a series of straw men, knocked them down and then looked to us to act as if the straw men had knocked the management down. They insist, however, that they should be protected against unmeritorious suits. The number of unmeritorious actions which can be started is legion and the task of making the mere starting of them impossible or difficult is itself impossible or difficult. However, the management's position is that if the stated value of the preferred stock is reduced, at least there probably will not be any suits based on the payment of dividends while the preferred capital is allegedly impaired. But it is difficult to believe that a strike-suitor who does not care whether his action is meritorious or not would shrink from alleging that, if the value of the net assets has sunk below $150,000,000 the capital of the corporation has been diminished "to an amount less than the aggregate amount of the capital represented by" the preferred. The phrase just quoted from § 34 of the Delaware General Corporation Law has not been construed by the Delaware courts. Counsel employed by the company testified before us that in his opinion the phrase means the stated or par value of the preferred. The legislative history of the section affords support to this

view. The argument for the other view runs as follows: This stock has a liquidating preference of $100, a redemption value of $110, and a dividend rate of $6 per share. The indications are that it actually contributed capital to the corporation at the rate of $100 per share. It is unrealistic to say that the question whether the capital represented by this stock is impaired should be judged on the basis of $10 per share. Is the capital represented by these shares $100 or $10? The least significant of all the figures mentioned is the $10. It has no relation to the liquidation value, the redemption value, the dividend rate, or the capital contributed—it represents nothing but a lawyer's inventiveness. If the real purpose of the Delaware statute is to protect the preferred capital, actually contributed, from being dissipated in the form of dividends the construction given the statute by the counsel called by the management will accomplish the directly opposite result. We think it unnecessary that we now make a choice between these opposing views. We state them merely to demonstrate that the management would not by the reduction of capital get assurance that unmeritorious suits would not be instituted.

In addition, we note that § 34 of the Delaware General Corporation Law also provides protection for directors who rely in good faith upon the books of account of the corporation or statements prepared by its officials as to assets, values, etc. (See footnote 1, *supra.*) If the management believes that there is no impairment of the capital represented by the preferred, this section of the Delaware statute gives them adequate protection. If they do not hold that belief then they should restate their asset accounts, with appropriate revisions of the balance sheet and the corporate structure; in other words—reorganize.

The application must be tested by the standards of the act. We cannot approve the declaration if we find it detrimental to the interests of the public, investors, or consumers. The management has produced nothing convincing in support of it.

As an attempt to "alter the priorities, preferences, voting power, or other rights of the holders" of an outstanding security, the proposal to reduce the stated value of preferred stock falls within § 6(a)(2) of the Public Utility Holding Company Act, 15 USCA § 79f(a)(2), and it must be the subject of a declaration complying with § 7. Section 7(e), 15 USCA § 79g(e), applicable to the declaration, provides (in pertinent part):

"The Commission shall permit a declaration to become effective regarding the exercise of a privilege or right to alter the priorities, preferences, voting power, or other rights of the holders of an outstanding security unless the Commission finds that such exercise of such privilege or right will result in an unfair or inequitable distribution of voting power among holders of the securities of the declarant or is otherwise detrimental to the public interest or the interest of investors or consumers."

In considering these standards at greater length the following should be noted. First, on April 9, 1942, after taking evidence, considering briefs, and hearing extensive argu-

ment we issued our order requiring C&S to reduce its stock capitalization to a single class of stock (1942) Holding Company Act Release No. 3432, 44 PUR(NS) 217. In our opinion accompanying the order we set forth at length why we thought such an order was necessary under the standards of § 11(b)(2) and good business standards. C&S appealed from that order, exercising the right to do so given it by the statute. March 31, 1943, the circuit court of appeals handed down its decision, *supra*, affirming our order in all respects.

Second, when the present application was argued before this Commission, counsel for C&S made the following statement: "Now, we recognize full well that this is just an interim proceeding. We recognize full well that we are going to have to come to a thoroughgoing recapitalization of C&S. We are going to have to change our preferred stock and common stock somehow. We may have to do it, as directed by the Commission, into one class of stock. If we should succeed in our appeal, we will probably change it to part preferred stock. But that we have got to change it we fully recognize. At that time we also recognize we will have to make a revaluation on our books."

Third, whether it is done our way or the management's way, it is apparent from the foregoing that an eventual valuation of C&S's assets is inevitable, since a recapitalization and reorganization is inevitable as company counsel so realistically and frankly points out, and as we ourselves have held in an order now affirmed by the circuit court of appeals.

Against this background, which includes the fact that the reasons given by the management in support of the application do not support it, the question recurs: Is the proposed reduction detrimental to the public interest or the interest of investors or consumers? After most careful deliberation we have concluded that the question must be answered in the affirmative and the application denied effectiveness. Our reasons in addition to those already indicated are told in the following paragraphs.

We think it is against the public interest that this stock should be tinkered with while our order requiring recapitalization on a one stock basis is outstanding. We have issued an order, affirmed by the court, telling the company what action is appropriate in view of its situation and directing it to carry it out. The management proposes to do something else. Furthermore we have found in connection with that order that the voting power of this company is unfairly and inequitably distributed as between the preferred and the common. We based that finding in part upon a comparison of the voting rights of the two classes with the capital represented by the two classes. We are unwilling now to take any action which would seem to imply that even within the purview of the Delaware statute the capital represented by the preferred is $10 a share and not $100 a share.

With major difficulties already in existence and the company faced, according to its own admission, with the necessity of a major operation, the management's proposal does not even reach the stature of a palliative. We

think the job of rebuilding the capitalization and balance sheet should be done well and thoroughly and not impeded by a series of improvised patches. Furthermore, we do not like the implications of the proposals so far as accounting concepts are concerned. If the point has been reached where asset values should be written down, then the surplus accounts and the common stock account should be exhausted before any part of the preferred is used up. If the point has been reached where the value of the assets is subject to substantial uncertainty, then appropriate reserves should be created through earnings, earned surplus, or the capital accounts where appropriate. If the losses exist, earnings current and otherwise should be first used to absorb them and if necessary that procedure should be followed or accompanied by a recapitalization or reorganization. If the capital has actually been impaired then it is unfair to investors, present and future, to publish a balance sheet showing earned surplus of over $800,000 and common stock at $168,000,000, despite the fact that the management has deemed it necessary to create by a write down of the stated value of the preferred a so-called capital surplus whose use is so restricted that it is difficult to know what it actually is. If it is in effect a reserve for anticipated losses then in the absence of a reorganization it should be created from earnings or earned surplus, and in the presence of a reorganization it should be treated as part of a thorough-going revision of the accounts and an overhauling of the capital structure.

Many of the foregoing factors were also present in the case of Re The United Corp. (1942) Holding Company Act Release No. 3391, 43 PUR (NS) 235, which is cited by declarants as ruling our decision on this application. There is, however, a significant difference between the present situation and the situation which was before us in that case. At the time we permitted United to write down its preferred stock capital, we had made no determination as to the action necessary under § 11(b)(2), or indeed that any action thereunder was necessary. In the C&S case we have already found what must be done under § 11(b)(2) and have issued our order as to this very preferred stock, and such order has been affirmed by the circuit court of appeals for the third circuit. It therefore appears that C&S is now very much closer to an ultimate solution of the problem created by its unabalanced capital structure than the United Corporation was at the time of our decision in that case. If it were necessary to reject the reasoning of the United decision in order to decide this case as we do, we would do so. We do not think it necessary because of the difference between the cases.

We fully understand and appreciate the views of the preferred stockholders who have communicated to us their desire to receive dividends on their stock, which is in arrears in a substantial amount. We have weighed their views carefully. They would, however, be far more persuasive were we not convinced that the more appropriate and, in the long run, most beneficial course for their interests will

be found in a pervasive reorganization of the company. We are convinced that compliance with our order of April 9, 1942, *supra*, will be found to be in their best interests.

An appropriate order will issue.

NEW YORK SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT

Ernesta Morris

v.

Consolidated Edison Company of New York, Incorporated

(265 App Div 743, 40 NY Supp(2d) 825.)

Service, § 220 — Discontinuance — Misappropriation of current — Notice.

Notice to a customer before discontinuing service for misappropriation of current either by tampering with the meter or by other means is not required by § 15 of the Transportation Corporations Law which, as amended, prohibits discontinuance for nonpayment of bills rendered for service without a 5-day written notice.

[April 9, 1943.]

APPEAL *from judgment in favor of customer suing for statutory penalty for failure to supply electricity; reversed and complaint dismissed.*

APPEARANCES: Beardsley & Taylor, of New York city (John M. Keegan, of Long Island City, of counsel; Thomas H. Beardsley, of New York city, on the brief), for appellant; Hutson L. Lovell, of New York city, for respondent.

Before Martin, P.J., and Untermyer, Dore, Cohn, and Callahan, JJ.

UNTERMYER, J.: The action was brought to recover statutory penalties provided in the Transportation Corporations Law (§§ 12, 15) for the failure of the defendant to supply electric service to the plaintiff commencing on April 24, 1941, at which time the defendant, without notice to the plaintiff, discontinued service. The defendant asserted, both as a defense and counterclaim, that by reason of the tampering with the defendant's meter and misappropriation of electric current the plaintiff was not entitled to be supplied with service and was indebted to the defendant for damages for the misappropriated current, for which it asked julgment in its favor.

The trial court found that the electric meter had been tampered with so

that it would not register properly the amount of current consumed and that the defendant was entitled to damages of $56.66, representing the estimated amount of current appropriated by the plaintiff, and directed judgment on the counterclaim for that amount. From that judgment the plaintiff has not appealed. The trial court found, however, that the current was not discontinued on April 24th on account of tampering with the meter which had been discovered by the defendant on March 5th but on account of the plaintiff's failure to pay for the unmetered current after receipt of cards left at the premises requiring the plaintiff to appear at the defendant's office. For that reason the court directed judgment in favor of the plaintiff for $69.89, representing statutory penalties under the Transportation Corporations Law after deducting the amount which the defendant was entitled to recover on its counterclaim.

Section 15 of the Transportation Corporations Law so far as material provides that upon nonpayment for current by the consumer the utility corporation may discontinue the supply to the premises but that "the supply of gas or electric light shall not be discontinued for nonpayment of bills rendered for service until and after a 5-day written notice has been served upon such person either by delivering the same to such person personally or by mailing the same in post-paid wrapper addressed to such person at premises where service is rendered." Concededly no such notice was sent or delivered in the present case.

It is by no means clear that the defendant discontinued service only on account of nonpayment by the plaintiff for the misappropriated current. It may have done so also on account of the act of the plaintiff in tampering with the meter. The delay from March 5th, when the meter was repaired to April 24th when service was discontinued was necessary to ascertain the amount of current consumed under ordinary conditions of use so that a calculation could be made of the amount of current misappropriated by the plaintiff. The defendant's desire to assert its legal claim for such current is not inconsistent with an intention to discontinue service on account of tampering with its meter. We prefer, however, to rest our decision on the broader ground that the statute (Transportation Corporations Law, § 15) as it has now been amended does not require a 5-day notice where the consumer has misappropriated current either by tampering with the meter or by other means.

Previous to 1935 § 15 of the Transportation Corporations Law permitted the corporation to discontinue service to customers who had failed to pay for gas or electricity without notice of any kind. By Chap. 481 of the Laws of 1935 the legislature amended § 15 by adding the provision that "the supply of gas or electric light shall not be discontinued for any cause until and after a 5-day written notice, either personally or by registered mail, has been given to such person." Under the statute as it then existed the case of Fisher v. Long Island Lighting Co. (1939) 280 NY 63, 28 PUR(NS) 250, 19 NE(2d) 682, was decided, where it was held that the words "for any cause" must be construed to include a tampering with the meter and that current might

not, even under those circumstances, be discontinued without written notice of five days. In 1937, however, the legislature amended these provisions of § 15 by striking out the words "for any cause" and substituting "for nonpayment of bills rendered for service." Laws 1937, Chap. 545. We think that in thus amending § 15 the legislature must have intended to require written notice only in cases where service was discontinued on account of the failure to pay for current lawfully purchased by the consumer rather than for current misappropriated by him. Current thus misappropriated cannot fairly be characterized as "service" for which a "bill" would be "rendered." Unless the utility saw fit to waive the tort, the larceny of such current would entitle it to assert a claim for damages rather than a claim based upon the consumer's contractual obligation to pay for "service." Since the requirement of notice exists only in cases where the current is discontinued "for nonpayment of bills rendered for service" we do not consider that notice was necessary in the present case.

The determination of the appellate term and the judgment of the municipal court should be reversed and the complaint dismissed, with costs to the defendant in all courts.

Determination of the appellate term and the judgment of the municipal court unanimously reversed and the complaint dismissed, with costs to the defendant in all courts.

Order filed.

All concur.

UNITED STATES SUPREME COURT

Illinois Commerce Commission et al.

v.

Charles M. Thomson, Trustee, of Property of Chicago & North Western Railway Company

[No. 178.]

(— US —, 87 L ed —, 63 S Ct 834.)

Rates, § 439 — Federal control — Intrastate commutation rates.

1. Intrastate commutation rates of an interstate railroad are not affected by an order of the Interstate Commerce Commission authorizing a nationwide increase in passenger rates in view of the fact that a prior order increasing such rates restricted the increase to the 2-cent per mile maximum prescribed by state law, and in view of the Commission's disclaimer of any intention to override the state law by the order, p. 144.

Injunction, § 13 — Commission action — Failure to exhaust remedy.

2. Failure of a railroad company to exhaust its administrative remedy by raising in a rate case before the state Commission the question whether existing rates are confiscatory requires the dismissal of an action to enjoin the state Commission from preventing a rate increase under an order of the Interstate Commerce Commission, p. 147.

Rates, § 439 — Federal control — Intrastate commutation rates.

Discussion, in dissenting opinion, of meaning and scope of order of Interstate Commerce Commission authorizing nationwide increase in railroad passenger rates, p. 147.

(ROBERTS, J., dissents.)

[April 12, 1943.]

APPEAL *from decree enjoining state Commission from preventing an increase in railroad rates under authority of an order of the Interstate Commerce Commission; reversed.*

APPEARANCES: William C. Wines, of Chicago, Illinois, argued the cause for appellants; Nye P. Morehouse, of Chicago, Illinois, argued the cause for appellee.

Mr. Chief Justice STONE delivered the opinion of the court: This case, which comes here by direct appeal under § 266 of the Judicial Code, 28 USCA § 380, 8 FCA title 28 § 380, involves the meaning of an order of the Interstate Commerce Commission and its application to the Illinois intrastate commutation passenger fares of the Chicago & North Western Railway. By interlocutory and finally by permanent injunction, the district court below of three judges has enjoined appellants, the Illinois Cenmerce Commission and named law enforcement officers of the state, from taking any steps to prevent a 10 per cent increase in such fares by appellee, trustee of the Chicago & North Western Railway Company in reorganization under § 77 of the Bankruptcy Act, 11 USCA § 205, 3 FCA title 11, § 205, — F Supp —. The 10 per cent increase, if effective, would bring the fares in some instances above the maximum of 2 cents per mile imposed by state statute. Illinois Revised Statutes, 1941, Chap. 114, §§ 154–156.

The bill of complaint alleges, and the district court found, substantially as follows: Until March 7, 1942, appellee and his predecessor in interest, the Chicago & North Western Railway Company, had collected commutation fares for the intrastate transportation of passengers in Illinois as required by a report and order of the Interstate Commerce Commission entered October 6, 1925, in a proceeding under § 13 of the Interstate Commerce Act (now 49 USCA § 13, 10A FCA title 49, § 13). The purpose and effect of that order was to require the Chicago & North Western to increase its intrastate commutation fares to substantially the same level as the fares then in force for interstate passenger traffic, which had previously been increased by order of the Commission, and thus to remove undue preference

and prejudice and unjust discrimination against interstate commerce, as well as undue preference and advantage to persons traveling in intrastate commerce on the Illinois lines of the Chicago & North Western. The order was entered upon appropriate findings. Re Intrastate Rates Within Illinois (1925) Docket No. 11703, 102 Inters Com Rep(F) 479. It directed an increase of 20 per cent over the then prevailing rates for the intrastate commutation fares involved in this case, but provided that this increase should be "subject to a maximum of 2 cents per mile," the Commission's opinion stating that this was "in deference to the state statute." (102 Inters Com Rep(F) at 485.)

On February 28, 1936, the Interstate Commerce Commission, after a general and nationwide investigation of railroad passenger fares, entered an order by which it retained its continuing jurisdiction over the Illinois intrastate commutation passenger fares here in question, by specific reference to its previous order in Docket No. 11703, although the order did not require any modification of those fares. Re Passenger Fares & Surcharges, Docket No. 26550 (1936) 214 Inters Com Rep(F) 174.

In December, 1941, the Commission undertook a further nationwide investigation of both freight rates and passenger fares to determine whether increases of 10 per cent, as asked by the railroads, should be authorized in view of increased operating expenses and costs of materials and supplies. By order of January 21, 1942, in that proceeding, known as Ex parte No. 148, the Commission—upon findings that the increase was necessary for adequate and efficient service during the war emergency—authorized the railroads, including the Chicago & North Western, to increase passenger fares by 10 per cent. The order further directed that "all outstanding orders, as amended, of the Commission, authorizing or prescribing interstate and intrastate fares, or bases of fares be, and they are hereby, modified, effective concurrently with the establishment of the increased fares" approved by the order, but only to the extent necessary to permit the authorized increase to be added to "the interstate and intrastate fares approved or prescribed in, or maintained or held by virtue of, said outstanding orders"; that a copy of the order be filed "in the docket of each such proceeding, including those proceedings under § 13 of the Interstate Commerce Act enumerated in the order of February 28, 1936, in Docket No. 26550"; and "that all tariffs or supplements changing fares by authority of this order, which are maintained or held by authority of outstanding orders of the Commission, shall bear on their title pages specific reference to this order." In a report and order of March 2, 1942, in Ex parte No. 148, the Commission reaffirmed these findings, authorized certain increases in freight rates, and made further findings of fact in support of the increases. Re Increased Railway Rates, Fares & Charges (1942) 248 Inters Com Rep (F) 545.

The district court held that the Commission's order of January 21, 1942, by its specific references to all outstanding orders previously issued in § 13 proceedings, which would include that of 1925 in Docket No.

11703, had been made applicable to the Illinois commutation passenger fares here in question.

Acting under the purported authority of these orders, appellee, about February 6, 1942, filed with the Illinois Commerce Commission, and with the Interstate Commerce Commission, tariff schedules referring to the latter's order of January 21, 1942, and increasing by 10 per cent, effective March 8, 1942, its previously existing Illinois intrastate passenger commutation fares. The fares proposed by these tariffs in some instances exceed the limit imposed by the Illinois 2-cent fare law. On February 18th the Illinois Commission issued an order purporting to suspend these tariffs and the increased fares named in them until July 6, 1942, and ordered appellee not to file any new tariff or otherwise to change the previously existing fares during the period of suspension or any extension of it without the permission of the state Commission. The order directed that a hearing be held by the state Commission on the propriety of the proposed changes.

The district court held that the effect of the state Commission's order was to prescribe for appellee the continuation of the intrastate passenger fares in force immediately before February 18, 1942, and to prohibit appellee from increasing or modifying those fares save as permitted by the state Commission; that appellants have threatened and continue to threaten appellee with the prosecution of numerous proceedings in the state courts to impose upon appellee and his agents fines and penalties for failure to comply with the state Commission's order; that unless appellants are enjoined from such threatened prosecutions and cumulative penalties, appellee will suffer irreparable injury.

From all this the district court concluded, as matters of law, that the Interstate Commerce Commission's order of January 21, 1942, is a valid order which modified the 1925 and 1936 orders taking jurisdiction over the intrastate commutation fares in question, and that the 1942 order, without more, authorized the increased fares prescribed in the tariffs filed by appellee. The court held that the Illinois Commission's order of February 18, 1942, was invalid and without force with respect to these commutation fares because in conflict with the 1942 order of the Interstate Commerce Commission, and for the additional reason that the old fares continued in effect by the state Commission are confiscatory and in violation of the Due Process Clause of the Fourteenth Amendment. The court accordingly restrained appellants from enforcing the state Commission's order, and from interfering with the collection of the commutation fares prescribed by appellee's proposed tariffs.

Appellants assail the judgment of the district court on the grounds that the purport and true meaning of the Interstate Commerce Commission's 1942 order was not to order into effect Illinois intrastate fares superseding those previously in force, but only to assent to increased rates when and if permitted by the state Commission, which it has not done; that the Interstate Commerce Commission's order, if intended to compel increases in intrastate rates, is not supported by adequate findings (cf. Florida v. United

States [1931] 282 US 194, 75 L ed 291, 51 S Ct 119); and that, so far as the judgment below rests on the alleged confiscatory character of the preëxisting rates, the finding of confiscation is not supported by the record, and appellee has not pursued the administrative remedy available before the state Commission, as is prerequisite to equitable relief.

[1] The meaning and appropriate application of the Interstate Commerce Commission's order are undoubtedly obscure. We have heard exhaustive argument and examined elaborate briefs by the parties to this litigation and by the city of New York as amicus curiae, endeavoring to throw light on its true meaning. Like arguments have been made, in a cause pending in the New York state courts,[1] to determine the application of this order to intrastate standard passenger fares of the Long Island Railroad.

As we were in doubt as to the intended scope of the Commission's order, and the Commission had not filed a brief or otherwise intervened in this litigation, we requested a brief on its behalf discussing the meaning and application of its order. In compliance with our request it has filed a brief in which it takes the position that the 1942 order was not intended, and should not be construed, to direct a 10 per cent increase in the Illinois intrastate commutation fares established in 1925. Although the brief is not wholly free from the obscurity surrounding the order itself, the Commission's ultimate position that the order is inapplicable to these particular commutation fares is one which, under all the circumstances of the case, we accept.

The doubt concerning the application of the 1942 order arises from uncertainty as to the extent to which its broad language is to be deemed restricted when read with the earlier orders of the Commission relating to intrastate rates, and in the light of the nature of the functions which the Commission is called on to perform in prescribing such rates. On its face the order provides broadly that: "all outstanding orders, as amended, of the Commission, authorizing or prescribing interstate and intrastate fares . . . are hereby, modified, effective concurrently with the establishment of the increased fares herein approved, only to the extent necessary to permit the increase herein authorized to be added to the interstate and intrastate fares approved or prescribed in . . . said outstanding orders." Whether this, without more, was intended or operates to direct a 10 per cent increase of appellee's intrastate commutation fares in Illinois, so as to preserve the established relationship between them and interstate fares, rather than intended to permit appellee to obtain the 10 per cent increase only with the assent of the state Commission, is the question.

[1] The supreme court of New York concluded that the Commission's order was not intended to direct a 10 per cent increase in those intrastate rates. Transit Commission v. Long Island R. Co. (1942) 178 Misc 290, 33 NY Supp(2d) 993. The court, however, suggested that an application might be made to the Interstate Commerce Commission for a clarification of its order to remove any doubt. On such application the Commission refused to clarify the order, and on rehearing the court adhered to its original decision. I. C. C. Order, entered in Ex parte 148, April 6, 1942; 107 NY LJ, p 1958, May 8, 1942. The decision was affirmed by the appellate division (1942) 265 App Div 847, 38 NY Supp (2d) 361, and the case is now pending in the New York court of appeals [— NY —, — NE(2d) —].

The position of the Interstate Commerce Commission is in substance that the order is not to be construed as prescribing Illinois intrastate commutation fares for the Chicago & North Western because the order was unattended by the procedure which the Commission regards as the appropriate basis for such an order, and consequently that the Commission did not have in mind or intend that the order should have that effect.

It has long been established that the Interstate Commerce Commission, under § 13(4) of the act, has power to supersede an intrastate rate by prescribing in its stead a new rate which the Commission finds necessary to remove undue or unreasonable prejudice to interstate commerce resulting from the maintenance of the intrastate rate. It may rightly establish such a modification of the intrastate rate only upon notice to the intrastate carriers concerned, and hearings, followed by findings showing prejudice to interstate commerce. Upon such findings the statute makes it the duty of the Commission to prescribe the just and reasonable intrastate rate found necessary to remove the prejudice. Wisconsin R. Commission v. Chicago, B. & Q. R. Co. 257 US 563, 66 L ed 371, PUR 1922C 200, 42 S Ct 232, 22 ALR 1086; Louisiana Pub. Service Commission v. Texas & N. O. R. Co. (1931) 284 US 125, 76 L ed 201, 52 S Ct 74; United States v. Louisiana (1933) 290 US 70, 78 L ed 181, 54 S Ct 28. And for purposes of this case we may assume, without deciding, that intrastate rates which have once been prescribed by § 13 orders may be modified by a blanket order raising or lowering the level of intrastate and interstate rates, even though the Commission makes no new findings of discrimination but leaves that question subject to later inquiry upon applications filed in particular cases. Cf. United States v. Louisiana, *supra;* New England Divisions Case (Akron, C. & Y. R. Co. v. United States [1923]) 261 US 184, 196–201, 67 L ed 605, 612–614, 43 S Ct 270.

In 1920 the Interstate Commerce Commission authorized a general increase of 20 per cent in interstate passenger fares, establishing a country-wide standard passenger fare of 3.6 cents a mile. Re Increased Rates (1920) 58 Inters Com Rep (F) 220 and 302. The Commission later instituted the § 13 proceeding which resulted in its 1925 order increasing by 20 per cent, subject to a 2 cent per mile maximum, the Illinois intrastate commutation fares of the Chicago & North Western, in order to remove the prejudice of such fares to interstate commerce. Re Intrastate Rates Within Illinois (1925) 102 Inters Com Rep(F) 479. This was followed by the 1936 order directing a general reduction of interstate passenger fares. By this order the Commission, as a means of increasing passenger traffic, reduced maximum standard Pullman fares to 3 cents and coach fares to 2 cents a mile. And to prevent intrastate fares subject to the earlier § 13 orders from being higher than the new interstate maximum fares, the Commission ordered all outstanding § 13 orders to be modified to the extent necessary to permit the new fares to become effective. Re Passenger Fares & Surcharges (1936) 214 Inters Com Rep(F) 174. While

this order affected many intrastate fares which had previously been subject to § 13 orders, it was without effect on Illinois commutation fares on the Chicago & North Western, which had been no greater than the maximum of 2 cents a mile. Thus the Illinois commutation fares involved in the present case, established in 1925, were not reduced between 1925 and 1942.

It is the position of the Commission that, since the 10 per cent increase of 1942 if mandatory would raise these Illinois intrastate commutation fares (unlike the standard fares) above the level set by the § 13 order of 1925, and as the Commission made no special findings justifying such an increase of the level of intrastate fares, the 1942 order is not to be understood to have the effect ascribed to it by the district court. The Commission points out that even if the need of equivalence of intrastate and interstate fares has not changed since 1925, the Commission is concerned not only with the necessity for maintainnig the equivalence, but also with the particular point at which the fares should be brought together. The Commission intimates that its findings establishing the 1925 maximum level of intrastate fares would not be regarded by it as sufficient support for a still higher level in 1942. It urges that the absence of findings supporting a higher level therefore indicates that its 1942 order was not intended, without more, to increase by 10 per cent the Illinois intrastate commutation fares.[2]

The Interstate Commerce Commission is without jurisdiction over intrastate rates except to protect and make effective some regulation of interstate commerce. In view of the Commission's construction of its order, and the grounds upon which it rests, we can only conclude that there is at least serious doubt whether the 1942 proceeding and the order which resulted from it were ever intended by the Commission to increase the intrastate rates in question. Since the Commission alone is authorized to wield the constitutional power to set aside state-established intrastate rates by prescribing intrastate rates itself, state power cannot rightly be deemed to be supplanted so long as the Commission's exercise of its authority is left in serious doubt. Arkansas R. Commission v. Chicago, R. I. & P. R. Co. (1927) 274 US 597, 603, 71 L ed 1224, 1228, 47 SCt 724. And where the applicability of the order is as doubtful as it is in this case, we should not feel justified in disregarding the Commission's disclaimer in this court of all intention to override Illinois state law by its 1942 order—especially in view of the fact that in the § 13 proceeding in 1925 the Commission had framed its order in deference to the 2-cent fare law prevailing in Illinois.

It is regrettable that prolonged litigations should have resulted because of the absence from the Commission's order of a sentence more precisely de-

[2] The brief filed by the Commission in this Court to assist in discovering the intended meaning of the order in Ex parte No. 148, states that "the 1942 increase may well be mandatory" as to standard intrastate passenger fares covered by prior outstanding § 13 orders, as in the New York case discussed in note 1, *supra*. This is said to be because, in the 1936 proceeding, such fares were reduced, and because the 10 per cent increase of 1942 would only raise them to a level well within the maximum prescribed for such fares in § 13 proceedings in 1920.

fining its scope, or of a clarifying order which could have been entered at any stage of the pending litigations.

Since we accept the Commission's conclusion that the 1942 order is inapplicable, it is unnecessary for us to consider whether, as appellants contend, the order if applicable would be open to collateral attack in this proceeding for the insufficiency of the Commission's findings to support it, or whether that issue may be litigated only in a suit to set aside the order brought against the United States as prescribed by the Urgent Deficiencies Act. [October 22, 1913] 38 Stat 208, 219, Chap. 32, 28 USCA § 46, 7 FCA title 28, § 46.

[2] Only a word need be said of the district court's finding of confiscation. Appellants filed no answer to the bill of complaint and no evidence was taken in the cause. Judgment in favor of appellee was entered upon appellants' motion to strike the complaint and dismiss the cause, and upon the prayer of the bill for a permanent injunction. The only support for the finding of confiscation is in the general allegations of the complaint that the existing intrastate commutation fares complained of are confiscatory, and more particularly that these fares are not adequate to compensate for the cost of the particular service.

Apart from the insufficiency of such allegations, when not buttressed by convincing proof, to sustain an injunction setting aside rates as confiscatory, see California R. Commission v. Pacific Gas & E. Co. (1938) 302 US 388, 401, 82 L ed 319, 326, 21 PUR (NS) 480, 58 S Ct 334, it appears that when the present suit was brought the state Commission had ordered a hearing before it concerning the propriety of appellee's proposed increase of the existing, allegedly confiscatory, fares. There is no contention and no finding that appellee's attack on the existing fares as confiscatory was not open for consideration before the Commission. The equitable remedy sought by appellee in court should have been denied because of his failure first to pursue the administrative remedy thus afforded. Gilchrist v. Interborough Rapid Transit Co. 279 US 159, 208, 209, 73 L ed 652, 664, 665, PUR1929B 434, 49 S Ct 282; Natural Gas Pipeline Co. v. Slattery (1937) 302 US 300, 310, 311, 82 L ed 276, 281, 282, 21 PUR(NS) 255, 58 S Ct 199. There are no circumstances of peculiar urgency alleged, and no other ground is disclosed by the record which would warrant a Federal equity court in dispensing with this salutary requirement.

Upon this record the district court should have declined to pass on the merits of the confiscation issue.

Reversed.

Mr. Justice Rutledge took no part in the consideration or decision of this case.

Mr. Justice ROBERTS dissenting:

I am of opinion that the judgment should be affirmed.

This case is important not so much because of the relative rights of the parties as of the principles announced by the court which I think are likely to produce unfortunate results in later cases.

First. The meaning and scope of the Interstate Commerce Commission's order is, in my view, clear. It

expressly included the earlier § 13 order affecting the intrastate rates of the Chicago and North Western which are in question. I could understand the assertion that the order is obscure if its purportcd application were to intrastate rates not specifically mentioned in the order itself. But here the Commission seems ex industria to have referred to an earlier § 13 order so as to leave no doubt of its purpose.

Second. Even if the order were obscure, any party in interest could have obtained a clarification by application to the Commission. It is somewhat difficult to undertsand why the Commission, in response to an informal application, refused to vouchsafe any clarification of the order in the case of New York intrastate rates.

Third. It seems to me inadmissible to permit the Commission, in a litigation such as the present, to suggest that its order was not intended to cover the intrastate rates in question because, forsooth, the order is not supported by requisite findings. I fail to see the fairness or equity of permitting parties to struggle for months or years over the meaning or scope of an order which happens to be involved in a collateral proceeding and then permit the Commission to appear in the litigation and attempt to explain why its order does or does not cover the situation disclosed.

Fourth. I also think it inadmissible to litigate, in a collateral proceeding such as this, the question of the adequacy of the support of the Commission's order in the record made before the Commission. Congress has provided a method whereby orders not entered in accordance with the provisions of the Interstate Commerce Act may be set aside or enjoined by a petition to a district court of the United States. This method of attack is available to any party in interest or any intervener before the Commission. It is wrong, in my judgment, to permit a state Commission, or any other party, to forego the method prescribed by the Urgent Deficiencies Act for enjoining or setting aside a Commission order on such ground as is here asserted and to act in the teeth of the order, reserving an attack on the findings, or lack of findings, to support the order until its regulations are challenged in an independent proceeding. In such a proceeding as this I think the order should be treated as binding until modified or set aside in the manner provided by Federal law.

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Re The Manufacturers Light & Heat Company

[Application Docket No. 60696.]

Intercorporate relations, § 12 — Jurisdiction of Commission — Arrangement for exchange of gas — Affiliates.

1. Approval of a contract between affiliated companies for the exchange

of gas is not required, and an application for such approval should be dismissed for lack of jurisdiction, p. 149.

Rates, § 213 — Filing of contract as tariff — Interchange of gas service — Affiliates.

2. A contract between affiliated companies for the interchange of gas service falls within the provisions of § 2, Par. (22), of the Public Utility Law and must be filed as a tariff in accordance with the provisions of § 302 of the Public Utility Law, p. 150.

(SIGGINS, Chairman, dissents.)

[June 1, 1943.]

APPLICATION *by gas company for approval of contract with affiliate for the exchange of gas; filing of contract ordered and petition for approval dismissed for lack of jurisdiction.*

By the COMMISSION: The petitioner, The Manufacturers Light and Heat Company, a Pennsylvania public utility corporation, seeks Commission approval of an arrangement for the exchange of gas with an affiliate, Atlantic Seaboard Corporation, a Delaware corporation operating in the state of Maryland.

Petitioner states that its pipe lines are interconnected with the pipe-line systems of Atlantic Seaboard Corporation at the Maryland-Pennsylvania state line, Burkins farm, Fulton township, Lancaster county, and that at various times since January 1, 1940, it has been desirable and convenient to exchange gas between the two companies for the purpose of enabling the receiving company to meet peak-load demands, or meet other demands of an emergency nature. The arrangement for the exchange of this gas was never reduced to writing but was an oral agreement between the operating departments of each company and through an oversight was not submitted to the Commission for approval.

Petitioner has set forth this informal arrangement in a letter dated May 20, 1941, to and approved by Atlantic Seaboard Corporation, effective for all deliveries of gas between the companies subsequent to January 1, 1940, whereby it is agreed that in the event of emergency requirements of gas by either company, the company requiring the gas may secure the same from the other company as needed, it being understood that neither company is obliged to supply the other, but may do so provided that it has excess gas available and can make delivery without jeopardizing the customers of the delivering company; and it is further agreed that an equivalent amount of gas shall be redelivered by the receiving company to the delivering company within a period of one year from the date on which gas was received.

[1] Petitioner seeks approval of the exchange of gas under § 702 of the Public Utility Law. In Bell Teleph. Co. v. Driscoll (1941) 343 Pa 109, 40 PUR(NS) 375, 21 A(2d) 912, the Pennsylvania supreme court held that § 702 of the Public Utility Law as amended is unconstitutional.

The substitute section of The Public Service Company Law of 1913 is Art. III, § 11(b). However, the instant agreement does not fall within any of the provisions of that section and accordingly our approval is not required.

[2] The contract, being for the interchange of service, falls within the provisions of § 2, Par. (22) of the Public Utility Law and, therefore, must be filed as a tariff by The Manufacturers Light and Heat Company in accordance with the provisions of § 302 of the Public Utility Law; therefore,

Now, to wit, June 1, 1943, it is *ordered:*

1. That The Manufacturers Light and Heat Company, in conformity with the provisions of § 302 of the Public Utility Law, and Tariff Circular No. 5 of the Commission, file said interchange contract as a tariff.

2. That the instant petition for the approval of said interchange contract be and is hereby dismissed for lack of jurisdiction.

The Chairman voted in the negative.

UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

American Gas & Electric Company

v.

Securities and Exchange Commission

[No. 7948.]

(— US App DC —, 134 F(2d) 633.)

Appeal and review, § 28.1 — Conclusiveness of decision — Finding as to subsidiary status.

1. The judicial function, on the review of an order of the Commission denying a declaration that a company is not a subsidiary of a holding company, involving the question of controlling influence, is exhausted when there is found a rational basis for the conclusions of the Commission after a fair and adequate hearing, p. 161.

Intercorporate relations, § 19.21 — Subsidiary status — Controlling influence — Burden of proof.

2. A company which, under § 2(a)(8) of the Holding Company Act, 15 USCA § 79b(a)(8), seeks a declaration that it is not a subsidiary of a specified holding company, because of a lack of controlling influence, has the initial burden to prove that its management and policies are not subject to the holding company's controlling influence, and the Commission's function is to make an adequate and fair appraisal of the weight and credibility of the evidence, p. 161.

Intercorporate relations, § 14.1 — Affiliated companies — Controlling influence.

3. The term "controlling influence" in § 2(a)(8)(B) of the Holding Company Act, 15 USCA § 79b(a)(8)(B), (providing for a declaration that a company is not a subsidiary of a specified holding company) means something less in the form of influence over the management or policies of a company than "control" of a company, and the statute is intended to cover any form or device which may be pursuant to an arrangement or understanding with one or more other persons, p. 161.

Intercorporate relations, § 19.21 — Subsidiary status — Fear of Commission determination — Policy of act.

4. Clause (iii) of § 2(a)(8)(B) of the Holding Company Act, 15 USCA § 79b(a)(8)(B), is an extensible formula that can be applied to meet the varied and subtle forms which corporate interrelationships have in the past and will in the future take, and it is intended to provide a broad sphere for the Commission's determinations in order to carry out the policies of the act as expressed in § 1, 15 USCA § 79a, p. 161.

Intercorporate relations, § 14.1 — Affiliated companies — Controlling influence.

5. The existence of controlling influence within the meaning of § 2(a)(8) of the Holding Company Act, 15 USCA § 79b(a)(8), is a factual determination to be ascertained in the Commission's expert judgment by the weighing of circumstantial evidence and the drawing of reasonable inferences therefrom, the principal factors being the size and extent of the companies involved, the extent of the intercompany relationships, the ownership and distribution of securities, and the parent company's part in the organization and development of the subsidiary company together with the past relationships; and, because of the public interest and purposes of the act involved, consideration must be given to the relationship of charges between the two companies for such items as financing and service and construction contracts, p. 162.

Intercorporate relations, § 14.1 — Affiliated companies — Controlling influence — Question of divestment.

6. The Commission, in determining whether there is a controlling influence within the meaning of § 2(a)(8) of the Holding Company Act, 15 USCA § 79b(a)(8), relating to subsidiary status, must see that an asserted divestment of controlling influence is actual and complete, not theoretical or partial; controls and influences exercised for a long time and extensively are not severed instantaneously, sharply, and completely, especially when powers of voting, consultation, and influence remain, p. 163.

Intercorporate relations, § 14.1 — Affiliated companies — Controlling influence — Subsidiary status — Past relationship.

7. Inferences drawn by the Commission from evidence as to past relationships between companies and other evidences of a holding company's present position of authority and influence in another company's management and stock ownership, were not held to be an unreasonable basis for a finding of "a personnel and tradition" making such a company subject to the controlling influence of the holding company within the meaning of § 2(a)(8) of the Holding Company Act, 15 USCA § 79b(a)(8); that the holding company had abandoned some characteristics of controlling influence did not require the Commission to disregard the past relationship between the two companies, p. 163.

Intercorporate relations, § 19.11 — Subsidiary status — Controlling influence — Exemption.

8. Section 2(a)(8) of the Holding Company Act, 15 USCA § 79b(a)(8), does not require findings of the evils enumerated in § 1 of the act or findings that the relationship of a parent and subsidiary in the conduct of the subsidiary has affected or will affect the public adversely, as a basis for holding that a controlling influence is such as to make it necessary or appropriate in the public interest or for the protection of investors or consumers that a subsidiary be not exempted from the requirements of the Holding Company Act, p. 164.

(STEPHENS, A. J., dissents.)

[February 1, 1943.]

PETITION *to review order of Securities and Exchange Commission denying order under § 2(a)(8) of the Holding Company Act declaring an applicant not to be a subsidiary; order affirmed. For Commission decision, see (1941) 40 PUR(NS) 453.*

APPEARANCES: Frederic L. Ballard, of Philadelphia, Pa., for petitioner; Lawrence S. Lesser, of Washington, D. C., with whom Chester T. Lane, General Counsel, of Washington, D. C., and Christopher M. Jenks, Assistant General Counsel, of Philadelphia, Pa., appeared on the brief, all of the Securities and Exchange Commission, for respondent.

Before Stephens, Vinson, and Rutledge, Associate Justices.

RUTLEDGE, A. J.: This is a petition of the American Gas and Electric Company to review an order of the Securities and Exchange Commission.[1] The order denied petitioner's application for an order, pursuant to § 2(a)(8) of the Public Utility Holding Company Act of 1935, declaring it to be not a subsidiary of Electric Bond and Share Company.[2]

Petitioner and Bond and Share are both registered holding companies un-

[1] Section 24(a) of the Public Utility Holding Company Act of 1935, 49 Stat 834 (1935) 15 USCA § 79x (1940).

[2] Section 2(a)(8) [49 Stat 807 (1935) 15 USCA § 79b (1940)] provides that, "The Commission, upon application, *shall by order declare that a company is not a subsidiary company of a specified holding company under clause (A) if the Commission finds that* (i) the applicant is not controlled, directly or indirectly, by such holding company (either alone or pursuant to an arrangement or understanding with one or more other persons) either through one or more intermediary persons or by any means or device whatsoever, (ii) the applicant is not an intermediary company through which such control of another company is exercised, and (iii) *the management or policies of the applicant are not subject to a controlling influence, directly or indirectly, by such holding company* (either alone or pursuant to an arrangement or understanding with one or more other persons) *so as to make it necessary or appropriate in the public interest or for the protection of investors or consumers that the applicant be subject to the obligations, duties, and liabilities imposed in this title upon subsidiary companies of holding companies.* The filing of an application hereunder in good faith shall exempt the applicant from any obligation, duty, or liability imposed in this chapter upon the applicant as a subsidiary company of such specified holding company until the Commission has acted upon such application. Within a reasonable time after the receipt of any application hereunder, the Commission shall enter an order granting, or, after notice and opportunity for hearing, denying or otherwise disposing of, such application." (Italics supplied.)

der the act. Petitioner is a New York corporation which owns directly all of the outstanding securities of eleven electric utility companies which supply electric light and power to approximately 830,000 customers in New Jersey, Pennsylvania, Ohio, Indiana, Michigan, Virginia, West Virginia, Kentucky, and Tennessee.[3] Through its wholly owned subsidiary, American Gas and Electric Service, petitioner furnishes its operating companies with management and supervisory services.

As of March 30, 1940, petitioner's capitalization consisted of 355,623 shares of 4¾ per cent cumulative preferred stock (par $100) and 4,482,737 shares of common stock (par $10). Both common and preferred shareholders are entitled to one vote per share.[4] Bond and Share owns 846,985 shares of common stock, which constitute 17.51 per cent of the outstanding voting securities.[5]

Petitioner is therefore a subsidiary of Bond and Share under clause (A) of § 2(a)(8).[6] However, petitioner maintains that it satisfies the conditions prescribed by the last paragraph of clause (B) of § 2(a)(8), that (1) it is not controlled, directly or indirectly, by Bond and Share; (2) it is not an intermediary company through which control of another company is exercised; and (3) its management and policies are not subject to a controlling influence, directly or indirectly, by Bond and Share so as to make it necessary or appropriate in the public interest or for the protection of investors or consumers that it be subject to the obligations, duties and liabilities imposed by the act upon subsidiary companies of holding companies.

The Commission concluded that the evidence would not support a declaration under (3), that petitioner was not a subsidiary of Bond and Share

[3] Petitioner's wholly owned subsidiaries are: Appalachian Electric Power Company, Atlantic City Electric Company, Indian General Service Company, Indiana and Michigan Electric Company, Kanawha Valley Power Company, Kentucky and West Virginia Power Company, Inc., Kingsport Utilities, Incorporated, the Ohio Power Company, the Scranton Electric Company, Southern Ohio Public Service Company, and Wheeling Electric Company. Atlantic City Electric Company owns 50 per cent of the outstanding voting securities of the Deepwater Operating Company and the Ohio Power Company owns 50 per cent of the outstanding voting securities of Beech Bottom Power Company, Inc. Petitioner also has a number of small subsidiaries, which are engaged in business as realty, steam-heating, coal and short-line railroad companies.

[4] In the event that preferred stock dividends are in arrears a full year, two additional directors may be elected exclusively by the preferred stockholders. If arrearages accumulate for three years, the preferred stockholders have the right to elect a majority of the board of directors. There has been no default in payment of either the preferred or common stock dividends, and dividends on both preferred and common have been paid each year since 1912.

[5] Bond and Share also owns 20.7 per cent, 42.4 per cent, 46.6 per cent, and 47 per cent, respectively, of the outstanding voting securities of American Power and Light Company, American and Foreign Power Company, Inc., National Power and Light Company, and Electric Power and Light Corporation, all registered holding companies under the act. For this case, these companies are considered as "acknowledged" subsidiary companies of Bond and Share. Utility companies in the Bond and Share system operate in 27 states and 13 foreign countries.

[6] Clause (A) of § 2(a)(8) [49 Stat 807 (1935), 15 USCA § 79b (1940)] defines a subsidiary company of a specified holding company to be "any company 10 per cent or more of the outstanding voting securities of which are directly or indirectly owned, controlled, or held with power to vote, by such holding company (or by a company that is a subsidiary company of such holding company by virtue of this clause or clause (B), unless the Commission, as hereinafter provided, *by order declares such company not to be a subsidiary company of such holding company.*" (Italics supplied.)

and therefore no findings were made on the question of "control" under (1) and (2). This petition presents the single question whether there is substantial evidence to support the Commission's findings that petitioner's management and policies are subject to a "controlling influence" of Bond and Share so as to make it necessary or appropriate in the public interest that petitioner be subject to the Public Utility Holding Company Act as a subsidiary of Bond and Share.[7]

Petitioner's principal argument is that the Commission fell into error in arriving at the ultimate fact of "controlling influence" by drawing inferences from past relationships between petitioner and Bond and Share which are "directly contrary to substantial, direct, contemporaneous, and uncontradicted evidence dealing with the present situation." The Commission stated its position as follows: "We believe . . . that the facts set out . . . show past relationships between applicant [petitioner] and Bond and Share which clearly 'have resulted in a personnel and tradition' which make applicant [petitioner] responsive to Bond and Share's desires . . . "[8] (40 PUR(NS) at p. 477).

The facts which sustain the Commission's findings are substantially as follows:

Organization. Petitioner was organized by Bond and Share in 1906 to purchase all the assets of the Electric Company of America, which consisted principally in securities of utility companies, which were controlled by the Electric Company and which served communities in Illinois, Indiana, New Jersey, New York, Ohio, Pennsylvania, and West Virginia. The details of petitioner's organization were handled by Bond and Share's board of directors and general counsel. Eleven of the fifteen original directors and all the original officers were affiliated with either Bond and Share or its general counsel.

Petitioner's original capitalization consisted of $6,282,000 99-year 5 per cent collateral trust bonds, $3,500,000 preferred stock, and $3,500,000 common stock. The $6,282,000 collateral trust bonds were issued at the time of the organization in return for the Electric Company properties. At the

[7] The Commission has been sustained upon similar facts in four recent cases. Pacific Gas & E. Co. v. Securities and Exchange Commission (1942) 127 F(2d) 378, 44 PUR(NS) 97, rehearing granted, June 6, 1942; Detroit Edison Co. v. Securities and Exchange Commission (1941) 119 F(2d) 730, 39 PUR(NS) 193, certiorari denied (1941) 314 US 618, 86 L ed 497, 62 S Ct 105; Hartford Gas Co. v. Securities and Exchange Commission (1942) 129 F(2d) 794, 46 PUR(NS) 491; Public Service Corp. of New Jersey v. Securities and Exchange Commission (1942) 129 F(2d) 899, 45 PUR(NS) 350, certiorari denied Dec. 14, 1942, — US —, 87 L ed —, 63 S Ct 266.

[8] For varying degrees of "past history" as evidence of "controlling influence," see, e. g., the following decisions of the Commission: Re Pacific Gas & E. Co. (1941) Holding Company Act Release No. 2988, petition denied, Pacific Gas & E. Co. v. Securities and Exchange Commission, *supra;* Re Detroit Edison Co. (1940) 7 SEC 968, 35 PUR(NS) 65, petition denied, Detroit Edison Co. v. Securities and Exchange Commission, *supra;* Re Public Service Corp. of New Jersey (1941) Holding Company Act Release No. 2998, petition denied, 129 F(2d) 899, *supra;* Re Panhandle Eastern Pipe Line Co. (1941) Holding Company Act Release No. 2778, 41 PUR(NS) 408; Re H. M. Byllesby & Co. (1940) 6 SEC 639, 32 PUR(NS) 130; Re Paul Smith's Hotel Co. (1941) Holding Company Act Release No. 2854, 39 PUR(NS) 208; Re Engineers Pub. Service Co. (1941) Holding Company Act Release No. 2897, 40 PUR(NS) 1; Re Manchester Gas Co. (1940) 7 SEC 57.

time of organization $2,500,000 (at par) of common and $1,200,000 (at par) of preferred stock were also issued. Of the common stock, $1,300,000 was used for promotion costs, Bond and Share retaining $235,000 for its part in petitioner's organization. Bond and Share sold the remaining $1,200,000 of common and the $1,200,000 of preferred stock for $1,200,000. At the end of the organization transactions Bond and Share retained for itself 4,856 shares of common stock, which amounted to 9.7 per cent of petitioner's outstanding voting securities. Bond and Share's holdings of petitioner's voting securities remained at approximately 9.7 per cent until 1929. They rose to 17.51 per cent in 1929 and 1930.

Management. Petitioner's board of directors has consisted, from its organization, generally of fifteen members, although in some years it has fluctuated between fourteen and sixteen. As shown above, the original board consisted of eleven Bond and Share men. According to the Commission's findings "most of the key men in American Gas [petitioner] were taken into the organization at a time when it was clearly controlled by Bond and Share." The Commission states its position in its "conclusions" that "it is fair to infer that Bond and Share believed them to be friendly to its interests at the time they were selected. Moreover, these men are indebted for their advancement over the years and for their present status to Bond and Share and the Bond and Share management." (40 PUR(NS) at p. 477.) These facts, the Commission found, show past relationships which have resulted in "personnel and tradition" which cause the petitioner to be responsive to Bond and Share.

Petitioner concedes that during the years when Bond and Share acted as petitioner's fiscal agent, during most of which it had a material representation on petitioner's board and executive committee, Bond and Share "had such an influence in the affairs of American Gas [petitioner] as could properly have been called a 'controlling influence' over its 'management or policies' had the act been in effect in those years." Bond and Share's functioning as petitioner's fiscal agent ceased in 1928–31. Since 1931 petitioner has handled its own financing, and Bond and Share's representation on petitioner's board has diminished until only two of the fifteen directors and one member out of five on the executive committee have any formal connection with Bond and Share. As a part of Bond and Share's diminishing influence petitioner's officers have resigned from the boards of acknowledged subsidiaries in the Bond and Share system. Petitioner says these facts show the Commission's conclusion that "past relationships . . . have resulted in a personnel and tradition making petitioner responsive to Bond and Share's desires" is not supported by substantial evidence, because the basic facts relied on by the Commission do not give a rational or coherent support to the Commission's inferential findings.

The Commission relies on the following facts for the basis from which to infer "a personnel and tradition."

The chairman of petitioner's board of directors and executive committee from its organization until the pres-

ent time has been a man of authority and influence in the Bond and Share's system. S. Z. Mitchell held that position from 1907 until his retirement in 1933. Mitchell was in charge of petitioner's financial policies and was influential with its growth and development through the acquisition of new properties. During this same period he served as a director and member of the executive committee of Bond and Share from its organization in 1905 to 1933; he was president of Bond and Share for 20 years and chairman of its board of directors from 1923 to 1933; when American Power and Light Company and Electric Power and Light Corporation, both registered holding companies and acknowledged subsidiaries of Bond and Share, were organized in 1909 and 1925, respectively, Mitchell became chairman of their boards of directors and member of their executive committees; and from 1925 to 1933 he was also chairman of the board of the National Power and Light Company, similarly a registered holding company and an acknowledged subsidiary of Bond and Share.

Upon Mitchell's retirement in 1933 C. E. Groesbeck assumed the key positions in the management of petitioner, Bond and Share, and the remaining holding companies in the Bond and Share system. In 1935 Groesbeck resigned from the boards of directors of American Power and Light Company, National Power and Light Company, and Electric Power and Light Corporation. However, he still retains his positions as chairman of both petitioner's and Bond and Share's boards of directors and executive committees. But he draws no salary from petitioner. As chief executive of Bond and Share he draws its top salary.

Petitioner's chief operating executive is its president, G. N. Tidd. He became petitioner's vice president in 1910, and president in 1923. Prior to 1910 he had managed the Indiana properties of the Electric Company, and was transferred to petitioner's operating personnel when it acquired these properties. As petitioner's president, Tidd has been responsible to the executive committee, whose chairman has been Bond and Share's chief executive and the majority of whose members were directors of Bond and Share or of acknowledged subsidiaries in the Bond and Share system. Also, the Commission put considerable emphasis on the fact that Tidd served as petitioner's vice president and president during the period of its growth at a time when its management and policies were admittedly subject to a controlling influence of Bond and Share. Tidd has been a member of the board of directors and executive committee of a number of Bond and Share's acknowledged subsidiaries during the years he has served as president of petitioner. He resigned from these positions between 1935 and 1939.

The findings of the Commission show that between 1907 and 1935, close to a majority, and in 1931–32, an actual majority, of petitioner's board of directors were directors, officers or employees of Bond and Share or of companies in the Bond and Share system. However, since 1936, the number of Bond and Share affiliates on petitioner's board has been reduced, and some of the members

who have remained on the board have resigned from their Bond and Share affiliations.

Of the present fifteen directors making up petitioner's board, i. e., as of July, 1940, two, C. E. Groesbeck and Frederick A. Farrar, are directors of Bond and Share, Groesbeck being chairman of the board of both companies and Farrar being retired and inactive; two other members, G. N. Tidd and Henry H. Wehrhane, were directors of acknowledged Bond and Share subsidiaries for many years; Tidd is petitioner's president and a member of its executive committee, and Wehrhane is also a member of petitioner's executive committee; two other members, Frank B. Ball and M. F. Millikan, according to the findings of the Commission "trace their associations, advancement and present status" with petitioner to actions of the board of directors and executive committee in years when these bodies admittedly were under the controlling influence of Bond and Share; two other members, Harrison Williams and J. F. McMillan, have no connection with Bond and Share, but have served petitioner for many years in coöperation with Bond and Share; Williams, the head of the North American Company, has served for more than thirty years on petitioner's board and executive committee and McMillan, petitioner's assistant treasurer, has been employed by petitioner since 1909; for the remaining seven directors the Commission has not imputed any responsiveness to Bond and Share's desires; of the seven, one is a vice president working on financing, three represent substantial holdings of petitioner's stock, two are incapacitated and inactive, and one is newly appointed.

Of petitioner's executive committee, the Commission found that from 1910 to 1936 a clear majority were directors of Bond and Share or acknowledged subsidiaries in the Bond and Share system. In 1940, after some of petitioner's directors had resigned from Bond and Share affiliations, only one member of petitioner's executive committee was affiliated with Bond and Share. Petitioner's present executive committee as shown by the record consists of Groesbeck, Bond and Share's chief executive, as chairman, Tidd and Wehrhane, recently resigned from Bond and Share affiliations, Williams, head of the North American Company, who has served on petitioner's executive committee since its organization, and Cresswell, representing a large holding of petitioner's stock.

Financing. For twenty-five years, from 1906 to approximately 1932, Bond and Share as petitioner's fiscal agent conducted all the financing operations for petitioner and its subsidiaries. Petitioner concedes that during this period Bond and Share exercised a "controlling influence" over petitioner's management and policies, but insists that it ended when petitioner took charge of its own financing. Between 1932 and 1937 petitioner engaged in no important financing operations. Since 1937 petitioner and its subsidiaries have completed refinancing operations involving the sale of $250,500,000 of securities to underwriters without the aid of Bond and Share. Petitioner has used the same investment houses for syndicate leaders as have been

used by Bond and Share before and since 1932. Much of the legal work for petitioner's refinancing operations was done by members of the staff of Bond and Share's general counsel. Until 1938, petitioner and Bond and Share employed the same law firm as general counsel.

The record shows that Bond and Share was well compensated for its services as petitioner's fiscal agent prior to 1932. During the period between 1920 and 1932 Bond and Share received more than $2,000,000 for these services. Between 1907 and 1928 Bond and Share made numerous unsecured loans to petitioner and between 1921 and 1930 petitioner made many loans to acknowledged subsidiaries of Bond and Share.

Bond and Share's stock ownership. Between 1907 and 1929 Bond and Share owned approximately 9.7 per cent of petitioner's outstanding voting securities. In 1929 and 1930 Bond and Share's holdings increased to 17.51 per cent. These holdings constitute Bond and Share's most important investment and its chief source of income. In 1939 Bond and Share derived 47.5 per cent of its total income from this investment in petitioner's common stock.

None of petitioner's other shareholders, who number almost 20,000, or any organized group, owns as much as four per cent of its voting stock. For many years Bond and Share's holdings have accounted for approximately 25 per cent of all the votes cast at petitioner's stockholders' meetings.

The record shows that the twenty-seven largest shareholders of petitioner's voting stock, including Bond and Share, own a total of 1,853,498 shares. Some of this group are represented on petitioner's board of directors. Excluding Bond and Share's 846,985 shares, the remaining twenty-six members of this group hold 1,006,513 shares. Petitioner argues that should a proxy fight occur it can be assumed that this group would vote with petitioner's management against Bond and Share. It is not necessary to speculate who would get control of the proxies in such a case. The evidence does not show anything but friendliness and coöperation between the managements of the two companies. There is no evidence that there has ever been a proxy fight in petitioner's history. Moreover, included in this group of twenty-six largest stockholders are shareholders who are admittedly Bond and Share men. Thus petitioner's largest stockholder, other than Bond and Share, is Mitchell, former chairman of the board of Bond and Share, who together with his wife owns 160,710 shares or 3.3 per cent of petitioner's voting stock. This makes it all the more impossible to speculate by inference that the nine directors who own or vote approximately 4 per cent of petitioner's stock or the group of twenty-six stockholders might combine to outvote Bond and Share at meetings of directors and stockholders. The very fact that it would take such a large and organized group of petitioner's 20,000 stockholders to outvote Bond and Share shows Bond and Share's substantial position in holding such a large single block of petitioner's voting securities.

Of the number of shares voted at the stockholders' meetings since 1927,

more than 95 per cent have been cast by proxy. Bond and Share has always sent its proxies to petitioner's proxy committees. From 1923 to 1938, every member of petitioner's proxy committees was either an officer or a director of Bond and Share or of one of its acknowledged subsidiaries. In 1940, Tidd having resigned from his Bond and Share affiliations, no member of petitioner's proxy committee had any formal Bond and Share affiliations.

Maintenance of separate managerial and operating staffs. Prior to 1935 Bond and Share rendered, for compensation, operating services to its acknowledged subsidiaries. Since 1935 a wholly owned subsidiary, Ebasco Services, Inc., has continued to perform these services. However, neither Bond and Share nor Ebasco has ever rendered any operating services to petitioner and its subsidiaries. Petitioner has itself performed these services for its own holding company system.

The Commission considered these matters primarily of "local concern" and gave as a reason that at the time of petitioner's organization it had its own operating staff which had been taken over from the Electric Company of America.

Petitioner's "direct contemporary evidence" showing that neither its management nor its policies are "presently subject" to a controlling influence of Bond and Share. Petitioner offered evidence to show that the filing of a formal plan by petitioner under § 11(e) of the act was effected in opposition to Groesbeck and other members of the Bond and Share management. The evidence shows that in response to a letter from the Chairman of the Commission requesting all registered holding companies to submit suggestions, even though they might be tentative, for compliance with § 11 of the act, petitioner prepared a formal plan as an application for integration under § 11(e), while Bond and Share proposed to submit only tentative proposals for the integration of its system and included petitioner's properties in these proposals.

At a conference in October, 1938, between the officers of the two companies, the president of Bond and Share stated its position that it would be unwise to submit a formal plan and urged the officers of the petitioner to abandon their intention of filing a formal plan. But petitioner's officers expressed their conviction that a plan under § 11(e) was a sound and appropriate course for petitioner to pursue. The formal plan was thereafter filed with the Commission. A second incident in connection with petitioner's § 11(e) plan occurred at a meeting of petitioner's executive committee in November, 1939, about a year after the plan had been filed. At this meeting Groesbeck urged petitioner's officers to withdraw the § 11(e) plan and file only an informal plan as other holding companies were doing. Petitioner's attorney expressed his opinion that it had not been a mistake to file the § 11(e) plan and that, even though the question might be debated, it would be a serious mistake to attempt to withdraw the plan.

Petitioner argues that here was a "direct contemporaneous" attempt by Bond and Share to exert its influence to control petitioner's integration

policy and the attempt failed. "And Bond and Share, itself impotent of controlling influence over petitioner, is asking the Commission to help it force petitioner into the Bond and Share program." Bond and Share included petitioner's properties in its integration proposals.

The Commission stated that this matter was not the subject of any substantial controversy between petitioner and Bond and Share. The resolution authorizing the filing of petitioner's formal plan under § 11(e) was unanimously adopted by petitioner's board of directors, without a dissenting vote by Groesbeck or Farrar, the representatives of Bond and Share on petitioner's board. Also, at the time of the consideration of petitioner's plan, petitioner had filed its application for an order declaring it not to be a subsidiary of Bond and Share and the resolution authorizing this application also was adopted by a unanimous vote of petitioner's board of directors.

Another material contention between petitioner and the Commission is over the differences in the substance of petitioner's formal plan and Bond and Share's tentative proposals for the integration of petitioner's companies. Petitioner argues that Bond and Share is attempting to retain petitioner's properties in the Bond and Share system by its proposals for integration. Bond and Share's program calls for "changes in ownership of property, exchanges, sales, purchases and so forth" in each of the proposed property groups built around "the four principal holding companies," one of which is petitioner. The Commission's view of petitioner's formal plan and Bond and Share's tentative proposals is that there is no material difference in the substance of the two plans. "Under both proposals, if the Commission were to accept the plans, as filed, petitioner and its system would remain substantially unchanged." [9]

The court's function, after consideration of the factual data set out above, is to ascertain whether the Commission's order dismissing petitioner's application, and thereby refusing to declare petitioner not subject to a "controlling influence" of Bond and Share and not a subsidiary of Bond and Share under § 2(a)(8)(B) of the act, is supported by substantial evidence.[10] There is no disagreement as to the basic facts. Petitioner's position is that the Commission's conclusions are based entirely on "past relationships," which are not sustained by substantial evidence

[9] On appeal, the Commission has made much of the admission in the famous Bond and Share Case that petitioner was a subsidiary of Bond and Share and not entitled to exemption as a subsidiary under the terms of § 2(a)(8) of the act. The admission was prepared in 1936 and was included in the answer and cross bill. See Securities and Exchange Commission v. Electric Bond & Share Co. (1937) 18 F Supp 131, affirmed (1937) 92 F(2d) 580, 21 PUR(NS) 299, affirmed (1938) 303 US 419, 82 L ed 936, 22 PUR(NS) 465, 58 S Ct 678, 115 ALR 105. The Commission stated in its opinion, Holding Company Act Release No. 2749, 40 PUR (NS) 453, 478, footnote 59: "Although we do not consider that the statement, made in 1936 in another proceeding, is conclusive here, we, nevertheless, regard it as having some measure of significance with relation to the issues here presented." Since the evidence sustains the Commission's conclusions, we deem it unnecessary to consider the significance to be given petitioner's admission in the answer in the Bond and Share Case.

[10] Section 24(a), 15 USCA § 79x: "The findings of the Commission as to the facts, if supported by substantial evidence, shall be conclusive."

when faced with details of the present situation.

[1, 2] The issue posed by the statute's negative is whether the evidence is of such a compelling character as to have required the Commission to find that petitioner's management and policies are not subject to a "controlling influence" of Bond and Share. The record may be such as to sustain either a negative or an affirmative finding by the Commission. Kansas City Power & Light Co. v. National Labor Relations Board (1940) 111 F(2d) 340, 349. The judicial function is exhausted when there is found a rational basis for the conclusions of the Commission after a fair and adequate hearing.[11] Although the initial burden is on petitioner to prove to the Commission that its management and policies are not subject to Bond and Share's "controlling influence," the Commission's function is to make an adequate and fair appraisal of the weight and credibility of the evidence.[12]

[3, 4] As the Commission has stated in Re H. M. Byllesby & Co. (1940) 6 SEC 639, 651, 32 PUR (NS) 130, 141: "It seems clear that Congress meant by the term 'controlling influence' something less in the form of influence over the management or policies of a company, than 'control' of a company." While the existence of "control" constitutes an absolute bar under clauses (i) and (ii) of § 2(a)(8)(B) for declaring a company not to be a subsidiary, attached to the phrase "subject to a controlling influence" is "so as to make it necessary or appropriate *in the public interest* or for the protection of investors or consumers that the applicant be subject to the obligations, duties, and liabilities imposed in this chapter upon subsidiary companies of holding companies."[13] (Italics supplied.) As "control" may take many different forms, so may "controlling influence,"[14] and the statute is intended to cover any form or device, which may be "pursuant to an arrangement

[11] Rochester Teleph. Corp. v. United States (1939) 307 US 125, 146, 83 L ed 1147, 28 PUR(NS) 78, 59 S Ct 754; Gray v. Powell (1941) 314 US 402, 411, 86 L ed 301, 62 S Ct 326; Public Service Corp. of New Jersey v. Securities and Exchange Commission (1942) 129 F(2d) 899, 903, 45 PUR(NS) 350.

[12] Detroit Edison Co. v. Securities and Exchange Commission (1941) 119 F(2d) 730, 736, 39 PUR(NS) 193; Pacific Gas & E. Co. v Securities and Exchange Commission (1942) 127 F(2d) 378, 382, 44 PUR(NS) 97; Public Service Corp. of New Jersey v. Securities and Exchange Commission, *supra*. The Commission, like other expert agencies dealing with specialized fields, has the function of appraising conflicting and circumstantial evidence and the weight and credibility of testimony. National Labor Relations Board v. Link-Belt Co. (1941) 311 US 584, 597, 85 L ed 368, 61 S Ct 358; Rochester Teleph. Corp. v. United States, *supra*.

[13] Cf. Re H. M. Byllesby & Co. *supra*.

[14] See, e. g., Detroit Edison Co. v. Securities and Exchange Commission, *supra;* Pacific Gas & E. Co. v. Securities and Exchange Commission, *supra;* Moreau Manufacturing Corp. (1941) Holding Company Act Release No. 2868, 40 PUR(NS) 42; Re Paul Smith's Hotel Co. (1941) Holding Company Act Release No. 2854, 39 PUR(NS) 208; Re Panhandle Eastern Pipe Line Co. (1941) Holding Company Act Release No. 2778, 41 PUR (NS) 408; Re Public Service Corp. of New Jersey, Holding Company Act Release No. 2998, Sept. 15, 1941, petition denied, 129 F(2d) 899, *supra;* Re Hartford Gas Co. (1941) 8 SEC 758, 41 PUR(NS) 437, petition denied (1942) 129 F(2d) 794, 46 PUR(NS) 491; Re Community Gas & Power Co. (1940) 7 SEC 643; Re Shinn & Co. (1940) 7 SEC 333; Re Manchester Gas Co. (1940) 7 SEC 57; Re H. M. Byllesby & Co. *supra;* Re Northern Nat. Gas Co. (1939) 5 SEC 228; Re Associated General Utilities Co. (1939) 4 SEC 526; Re Employees Welfare Asso. (1939) 4 SEC 792.

Actual "control" may exist under circumstances other than the ownership of a majority of voting stock. See, e. g., United States v. Union P. R. Co. (1912) 226 US 61, 95, 57 L ed 124, 33 S Ct 53; Natural Gas Pipeline Co. v. Slattery (1937) 302 US 300,

or understanding with one or more other persons."[15] In clause (iii) Congress has enacted an extensible formula that can be applied to "meet the varied and subtle forms which corporate interrelationships have in the past and will in the future take."[16] It is intended to provide a broad sphere for the Commission's determinations in order to carry out the policies of the act as expressed in § 1.[17]

[5] The existence of "controlling influence" is a factual determination to be ascertained in the Commission's expert judgment by the weighing of circumstantial evidence and the drawing of reasonable inferences therefrom.[18] The principal factors in determining this from the special circumstances of each case for the statutory exemption are the size and extent of the companies involved, the extent of the intercompany relationships, the ownership and distribution of securities, and the parent company's part in the organization and development of the subsidiary company together with the past relationships and, because of the public interest and purposes of the act involved, consideration must be given to the relationship of charges between the two companies for financing, service and construction contracts, etc.[19]

In brief recapitulation of the evidence, we find on one side Bond and Share's ownership of 17.51 per cent of petitioner's voting stock, from which the former derived 47.5 per cent of its total income in 1939; ownership of petitioner's voting stock widely scattered among approximately 20,000 shareholders so that, other than Bond and Share, no one person or group of persons owns more than four per cent, and the next largest block, 3.3 per cent, is held by Mitchell, life-long official and leading figure, until his retirement, in Bond and Share, and his wife; Bond and Share's voting of approximately 25 per cent of the total number of shares voted at petitioner's stockholders meetings, and doing so as late as 1940 by turning its proxies over to petitioner's proxy committee; intercompany directorships, the chairman of petitioner's board of directors and executive committee being the chairman of Bond and Share's board of directors and executive committee; and the long historical relationship between petitioner and Bond and Share in petitioner's organization, development, and management.

On petitioner's side we find Bond and Share's relinquishment of its control as petitioner's fiscal agent; the resignation from Bond and Share

307, 82 L ed 276, 21 PUR(NS) 255, 58 S Ct 199; Hyams v. Calumet & Hecla Mining Co. (1915) 221 Fed 529, 541; Globe Woolen Co. v. Utica Gas & E. Co. (1918) 224 NY 483, 121 NE 378, 379. The Supreme Court has swept aside all rigid and artificial tests of "control" in Rochester Teleph. Corp. v. United States, *supra*, 307 US at p. 145.

[15] 15 USCA § 79b(a)(8) (B) (iii).

[16] H. R. Rep. No. 1318, 74th Cong. 1st Sess. (1935) 9.

[17] Cf. Electric Bond & Share Co. v. Securities and Exchange Commission (1938) 303 US 419, 441, 82 L ed 936, 22 PUR(NS) 465, 58 S Ct 678, 115 ALR 105; Burco v. Whitworth (1936) 81 F(2d) 721, 734, 14 PUR (NS) 495, certiorari denied (1936) 297 US 724, 80 L ed 1008, 56 S Ct 670; Detroit Edison Co. v. Securities and Exchange Commissoin (1941) 119 F(2d) 730, 39 PUR(NS) 193; Securities and Exchange Commission v. Associated Gas & E. Co. (1938) 24 F Supp 899, 902, 26 PUR(NS) 275, affirmed (1938) 99 F(2d) 795, 26 PUR(NS) 399.

[18] Rochester Teleph. Corp. v. United States, see note 14 *supra*.

[19] Detroit Edison Co. v. Securities and Exchange Commission, *supra*, notes 12, 14. Cf. cases cited in note 14 *supra*.

affiliations by petitioner's directors and members of its executive and proxy committees; that neither Bond and Share nor its wholly-owned subsidiary, Ebasco Services, Inc., has ever provided operating services for the American Gas system; that construction and group purchase contracts with the Bond and Share system ended in 1932; that many Bond and Share men have resigned from petitioner's board until only two with formal connections remain and only one is active; and the evidence of conflict between the management of petitioner and Bond and Share over petitioner's filing of a formal plan for its integration under § 11(e) of the act.

[6] Without doubt these facts constitute a weakening of the formal evidences of control and, it may be conceded, a contraction in the extent to which it has been exercised in fact. But they cannot be taken conclusively as a corporate "declaration of independence" or as sufficient to establish such independence as fait accompli. The period of dependence was too long, the separation from influence too inconclusive, to establish as a matter of law that petitioner no longer occupies a state of dependency. The facts do not remove entirely either the existence of "controlling influence" or the possibility of Bond and Share's exercising a "latent power" to control, should business conditions make it appropriate. Cf. Detroit Edison Co. v. Securities and Exchange Commission, cited footnotes 17, 19. Under some circumstances "controlling influence may spring as readily from advice constantly sought as from command arbitrarily imposed." Re Manchester Gas Co. (1940) 7 SEC 57, 62. It is the Commission's duty to see that divestment of "controlling influence" is actual and complete, not theoretical or partial. Re International Paper & Power Co. (1937) 2 SEC 274, 278, rev'd on jurisdictional grounds, Lawless v. Securities and Exchange Commission (1939) 105 F(2d) 574, 32 PUR(NS) 467. Controls and influences exercised for so long and so extensively as were Bond and Share's over petitioner are not severed instantaneously, sharply and completely, especially when powers of voting, consultation and influence such as have been retained remain. Petitioner may have advanced, in the terminology of empire, from status as dependency or colony to one of a dominion, but it has not become an independent empire as a matter of law.

[7] Giving due weight to the past relationships of petitioner and Bond and Share and the other evidences of Bond and Share's present position of authority and influence in petitioner's management and stock ownership, we cannot say that the inferences drawn therefrom by the Commission to find "a personnel and tradition" which make petitioner responsive to Bond and Share's desires are unreasonable.[20] The Commission therefore committed no error in denying peti-

[20] Compare these facts with the following cases in which "controlling influence" has been found to exist: Re The Detroit Edison Co. (1940) 7 SEC 968, 35 PUR(NS) 65, petition denied, Detroit Edison Co. v. Securities and Exchange Commission (1941) 119 F(2d) 730, 39 PUR(NS) 193; Re Pacific Gas & E. Co. Holding Company Act Release No. 2988, Sept. 11, 1941, petition denied, Pacific Gas & E. Co. v. Securities and Exchange Commission (1942) 127 F(2d) 378, 44 PUR(NS) 97; Re The Hartford Gas Co. (1941) 8 SEC 758, 41 PUR(NS) 437, petition denied (1942) 129 F(2d) 794,

tioner exemption from the act as a subsidiary of Bond and Share.[21] That Bond and Share has recently abandoned some characteristics of "controlling influence" did not require the Commission to disregard the past relationships between the two companies.[22]

[8] The Commission's finding that the "controlling influence" is such "as to make it necessary or appropriate in the public interest or for the protection of investors or consumers" must likewise be upheld.[23] Bond and Share's relationship to petitioner goes much beyond that of a single investor in petitioner's securities.[24] This relationship has been secured by a disproportionately small investment. There is evidence also of large write-ups of petitioner's properties while admittedly under Bond and Share's "controlling influence."

But § 2(a)(8) does not require findings of the evils enumerated in § 1 of the act.[25] Nor does the statutory formula require findings that

46 PUR(NS) 491; Re Manchester Gas Co. (1940) 7 SEC 57; Re Shinn & Co. (1940) 7 SEC 333; Re H. M. Byllesby & Co. (1940) 6 SEC 639, 32 PUR(NS) 130; Re Associated General Utilities Co. (1939) 4 SEC 526; Re Panhandle Eastern Pipe Line Co. (1941) Holding Company Act Release No. 2778, 41 PUR (NS) 408; Re Paul Smith's Hotel Co. (1941) Holding Company Act Release No. 2854, 39 PUR(NS) 208, with the following cases in which the Commission has found that no "controlling influence" exists; Re Bridgeport Gas Light Co. (1940) 8 SEC 295; Re Reading Gas Co. (1940) 7 SEC 755, 35 PUR(NS) 32; Re Lehigh Power Securities Corp. (1939) 5 SEC 143; Re The Cleveland-Cliffs Iron Co. (1938) 3 SEC 326, 333; Re Boise Gas Light & Coke Co. (1937) 2 SEC 269.

[21] The issue presented in a proceeding under § 2(a)(8)(B) of the act is "whether or not there is control or susceptibility to controlling influences *in fact*, and does not merely relate to the percentage of voting securities held. It has frequently been a most troublesome question, necessitating the most thorough exploration of historical and potential relationships between the companies involved." See Re Engineers Pub. Service Co. (1941) Holding Company Act Release No. 2897, 40 PUR(NS) 1, 29.

[22] The Commission has construed "subject to a controlling influence" to include "susceptibility to domination." Re The Detroit Edison Co. *supra*, note 20; Re Bridgeport Gas Light Co. *supra*, note 20; Re Hartford Gas Co. *supra*, note 20. This construction has been upheld by the courts, Pacific Gas & E. Co. v. Securities and Exchange Commission, *supra*, note 20, 127 F(2d) at pp. 382, 391; Public Service Corp. of New Jersey v. Securities and Exchange Commission (1942) 129 F(2d) 899, 903, 45 PUR(NS) 350; Detroit Edison Co. v. Securities and Exchange Commission, *supra*, note 20, 119 F(2d) at p. 738. See note (1942) 56 Harv. L. Rev. 100. And even if the action of the Commission is favorable for exemption, the nonexistence of "controlling influence" may be only conditional and temporary. Re Engineers Pub. Service Co. *supra*, note 21; Re Panhandle Eastern Pipe Line Co. *supra*, note 20.

[23] In some case the Commission has exempted subsidiaries, even though "controlling influence" was found to exist, when it was not "necessary or appropriate in the public interest" to subject the company to the Commission's regulatory jurisdiction as a subsidiary. E. g., Re Wisconsin Valley Improv. Co. (1940) 8 SEC 134, 138, 36 PUR(NS) 305. For cases of the difference in the weight to be given the "public interest," cf., e. g., Re Employees Welfare Asso. (1939) 4 SEC 792, 796; Re Community Gas & Power Co. (1940) 7 SEC 643, 645; Re Utilities Employees Securities Co. (1939) 4 SEC 806, 809. Even though exemption is granted, it may be on certain conditions. See Genesee Valley Gas Co. (1938) 3 SEC 672, 677; Re Cresson Electric Light Co. (1936) 1 SEC 379, 381.

[24] Petitioner is a registered holding company and, as such, is subject to the regulatory jurisdiction of the Commission. This fact does not prevent its being "necessary and appropriate in the public interest" to subject petitioner to the Commission's regulatory jurisdiction as a subsidiary of Bond and Share, since the protection of the "public interest" is not the same in the two situations. Also, the status of the petitioner may be of importance to the integration of petitioner's system under § 11 of the act.

[25] "The purpose of the statute is not to punish abuse, but to prevent its occurrence. Both 'good' and 'bad' public utility holding companies, within the ambit of Federal power are subject to the provisions of the act in order to guard against certain evils. . . ." Re Houston Nat. Gas Corp. (1938) 3 SEC 664, 669, 25 PUR(NS) 1, 6; Re Manchester Gas Co. (1940) 7 SEC 57, 62.

the relationship of the parent and subsidiary in the conduct of the subsidiary has affected or will affect the public adversely.[26] The statute contemplates that the Commission will exercise its control prospectively in a field of important economic activities.[27] In order to do this the Commission has been granted broad powers in this field, and when these have been exercised properly its action must be upheld by the courts.[28] We find that the Commission has properly performed its function. The petition to set aside the Commission's order is therefore denied, and the order of the Commission must be affirmed.

It is so *ordered.*

STEPHENS, Associate Justice (dissenting). Section 2(a)(8) of the Public Utility Holding Company Act of 1935, 49 Stat. 807, 15 USCA § 79b, provides:

". . . The Commission, upon application, shall by order declare that a company is not a subsidiary company of a specified holding company under clause (A) [which clause makes a subsidiary any company 10 per cent or more of whose outstanding voting securities are owned, controlled, or held with power to vote, by a holding company] if the Commission finds that (i) the applicant is not controlled, directly or indirectly, by such holding company (either alone or pursuant to an arrangement or understanding with one or more other persons) either through one or more intermediary persons or by any means or device whatsoever, (ii) the applicant is not an intermediary company through which such control of another company is exercised, and (iii) the management or policies of the applicant are not *subject to a controlling influence,* directly or indirectly, by such holding company (either alone or pursuant to an arrangement or understanding with one or more other persons) so as to make it necessary or appropriate in the public interest or for the protection of investors or consumers that the applicant be subject to the obligations, duties, and liabilities imposed in this title upon subsidiary companies of holding companies. . . . As a condition to the entry of, and as a part of, any order granting such application, the Commission may require the applicant to apply periodically for a renewal of such order and to file such periodic or special reports regarding the affiliations or intercorporate relationships of the applicant as the Commission may find necessary or appropriate to enable it to determine whether in the case of the applicant the conditions specified in clauses (i), (ii), and (iii)

[26] "If the 'controlling influence' is sufficiently extensive to embrace the power to bring about the evils that the act is designed to guard against, the statutory standard under § 2(a)(8) is satisfied." Re Manchester Gas Co. *supra,* 7 SEC at p. 62.

[27] Cf. Chenery Corp. v. Securities and Exchange Commission (1942) 75 US App DC 374, 44 PUR(NS) 138, 128 F(2d) 303, 315, certiorari granted (1942) 317 US 609, 87 L ed —, 63 S Ct 52.

[28] Rochester Teleph. Corp. v. United States (1939) 307 US 125, 139, 145, 83 L ed 1147, 28 PUR(NS) 78, 59 S Ct 754; Mississippi Valley Barge Line Co. v. United States (1934) 292 US 282, 286, 78 L ed 1260, 4 PUR (NS) 211, 54 S Ct 692; Federal Communications Commission v. Pottsville Broadcasting Co. (1940) 309 US 134, 144, 145, 80 L ed 656, 33 PUR(NS) 75, 60 S Ct 437; Board of Trade of Kansas City v. United States (1942) 314 US 534, 546, 547, 86 L ed 432, 62 S Ct 366; Scripps-Howard Radio v. Federal Communications Commission (1942) 316 US 4, 10, 86 L ed 1229, 43 PUR(NS) 449, 62 S Ct 875; Untied States v. Morgan (1941) 313 US 409, 422, 85 L ed 1429, 40 PUR(NS) 439, 61 S Ct 999.

are satisfied during the period for which such order is effective. The Commission, upon its own motion or upon application, shall revoke the order declaring such company not to be a subsidiary company whenever in its judgment any condition specified in clause (i), (ii), (iii) is not satisfied in the case of such company, or modify the terms of such order whenever in its judgment such modification is necessary to ensure that in the case of such company the conditions specified in clauses (i), (ii), and (iii) are satisfied during the period for which such order is effective. . . ." [Italics supplied.]

The question in this case is whether or not, within the meaning of this act, American Gas and Electric Company (hereinafter called American Gas) is a subsidiary of Electric Bond and Share Company (hereinafter called Bond and Share).[1] The Commission found "that the facts . . . show past relationships between applicant [American Gas] and Bond and Share which clearly 'have resulted in a personnel and tradition' which make applicant responsive to Bond and Share's desires. . . ." The act provides in § 24(a), 15 USCA § 79x, that "The findings of the Commission as to the facts *if supported by substantial evidence*, shall be conclusive." (Italics supplied) American Gas contends that there is no substantial evidence to support the finding that the Commission made and that on the contrary substantial evidence shows, and the Commission should have found, that the "management or policies" of American Gas "are not subject to a controlling influence, directly or indirectly," by Bond and Share and that it is therefore not a subsidiary of the latter.[2] This finding the Commission declined to make.

In determining the questions of fact in this case the Commission as trier of fact must, properly, have taken two steps: one, determination, from consideration of the evidence, of the underlying or subsidiary (sometimes referred to as the basic) facts in the case; the other, determination from such facts of the question whether the ultimate facts alleged have been established. And, under the system of law guaranteed by our Constitution, the subsidiary facts must be reached from the evidence and the ultimate facts from the subsidiary facts, not arbitrarily or by assumption or conjecture or by a process contrary to reason, but according to reason. Although, as said in National Labor Relations Board v. Pennsylvania Greyhound Lines (1938) 303 US 261, 271, 82 L ed 831, 58 S Ct 571, 115 ALR 307, inferences are to be drawn by the trier of fact and not by the courts, the inferences must nevertheless be reasoned inferences. And

[1] American Gas is itself a registered holdnig company under the act, and as such it and its subsidiaries are subject to the provisions of the act and to the jurisdiction of the Commission affecting holding companies and their subsidiaries. The case involves, therefore, no question as to this regulated status of American Gas and its system. American Gas seeks recognition and declaration that it is not a subsidiary of Bond and Share so that the provisions of the act and the Commission's orders to effectuate them shall, as to American Gas, be directed to it and its system separately and not as a part of the larger and more complicated system of Bond and Share.

[2] The Commission does not contend that American Gas is "controlled" by Bond and Share within the meaning of that word in clause (i) of § 2(a)(8)(B), or that it is "an intermediary company" within the meaning of clause (ii).

it is the duty of the reviewing tribunal to see that they are, otherwise the case is not decided according to law. "The primary question presented for our determination is whether or not the findings of the Board find support in the record and are not arbitrary and capricious." Union Drawn Steel Co. v. National Labor Relations Board (1940) 109 F(2d) 587, 589. Under the Federal rule findings must be supported by substantial evidence, and substantial evidence is "more than a scintilla and must do more than create a suspicion of the existence of the fact to be established." National Labor Relations Board v. Columbian Enameling & Stamping Co. (1939) 306 US 292, 300, 83 L ed 660, 59 S Ct 501. In Consolidated Edison Co. v. National Labor Relations Board (1938) 305 US 197, 229, 230, 83 L ed 126, 26 PUR(NS) 161, 170, 59 S Ct 206, the Supreme Court put it thus:

". . . the statute, in providing that 'the findings of the Board as to the facts if supported by evidence, shall be conclusive,' means supported by substantial evidence. Washington, V. & M. Coach Co. v. National Labor Relations Board (1937) 301 US 142, 147, 81 L ed 965, 57 S Ct 648. Substantial evidence is more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. [Citing authorities] . . .

". . . desirable flexibility in administrative procedure does not go so far as to justify orders without a basis in evidence having rational probative force. . . ."

In the instant case the subsidiary or basic facts are undisputed; the dispute in the case is concerning their meaning. Therefore the question before us on this review of the correctness of the Commission's findings is whether or not the inference drawn by the Commission that the facts show past relationships between American Gas and Bond and Share which clearly have resulted in a personnel and tradition which make it responsive to Bond and Share's desires is a reasonable inference, or whether the Commission should reasonably have inferred and found that the "management or policies" of American Gas "are not subject to a controlling influence" by Bond and Share and that it is hence not a subsidiary of the latter.[3]

[3] To safeguard the integrity of findings of ultimate fact arrived at by inference, the law has established certain principles with reference to the dependability of inferences: (1) An inference to be reasonable must be warranted from all the evidence, otherwise a fact reasonably inferable from a single fact or group of facts might be inconsistent with the totality of proven or conceded subsidiary facts. As said in National Labor Relations Board v. Union Pacific Stages (1938) 99 F(2d) 153, 177, where the court interpreted the meaning of § 10(e) of the National Labor Relations Act, 29 USCA § 160(e), providing that " . . . 'the findings of the Board as to the facts, if supported by evidence, shall be conclusive': But the courts have not construed this language as compelling the acceptanec of findings arrived at by accepting part of the evidence and totally disregarding other convincing evidence." In short, a trier of fact may not ignore a part of the evidence. In National Labor Relations Board v. Thompson Products (1938) 97 F (2d) 13, 15, the court said in respect of § 10 (e) of the act: "It means that the one weighing the evidence takes into consideration all the facts presented to him and all reasonable inferences, deductions and conclusions to be drawn therefrom and, considering them in their entirety and relation to each other, arrives at a fixed conviction. . . . Testimony is the raw material out of which we construct truth, and, unless all of it is weighed in its totality, errors will result and great injustices be wrought."

(2) If two equally probable but inconsistent inferences may be drawn from the same

But before the question of the sufficiency of the evidence to support the findings in the instant case can be determined the meaning of the phrase "subject to a controlling influence" as used in the statute must be ascertained. Here I am unable to agree with the construction of this phrase in the cases relied on in the majority opinion. It was held in Detroit Edison Co. v. Securities and Exchange Commission (1941) 119 F(2d) 730, 739, 39 PUR (NS) 193, 205, that the phrase "means the act or process, or power of producing an effect which may be without apparent force or direct authority and is effective in checking or directing action, or exercising re-

facts, a finding of fact cannot reasonably be based upon either of them; in such a situation the evidence is equivocal. Pennsylvania R. Co. v. Chamberlain (1933) 288 US 333, 77 L ed 819, 53 S Ct 391. In that case the Court said: "We, therefore, have a case belonging to that class of cases where proven facts give equal support to each of two inconsistent inferences; in which event, neither of them being established, judgment, as a matter of law, must go against the party upon whom rests the necessity of sustaining one of these inferences as against the other, before he is entitled to recover [citing authorities]." (288 US at p. 339.) See also Cupples Co. Manufacturers v. National Labor Relations Board (1939) 106 F(2d) 100. As illustrated in that case: "The evidence that the company welcomed the organization of an independent union of its employees and preferred such a union to any other, and made haste to recognize the association as the sole bargaining representative for all of its employees, is not a sufficient factual basis for the finding of interference, domination and support. This for the reason that, while such evidence is consistent with the hypothesis that the formation and administration of the independent union was interfered with, dominated and supported by the company, it is not inconsistent with the contrary hypothesis, and therefore supports neither." (106 F(2d) at p. 114).

(3) Where two different inferences may be drawn from undisputed facts, that which is the more probable is the one which must be drawn. National Labor Relations Board v. Sands Mfg. Co. (1939) 306 US 332, 83 L ed 682, 59 S Ct 508; Appalachian Electric Power Co. v. National Labor Relations Board (1938) 93 F(2d) 985.

(4) A fact may not be inferred from a proven fact or facts where unimpeached and uncontradicted testimony consistent with such proven fact or facts but inconsistent with the fact sought to be inferred, is in the record. Pennsylvania R. Co. v. Chamberlain, *supra;* Cupples Co. Manufacturers v. National Labor Relations Board, *supra;* Foote Bros. Gear & Machine Corp. v. National Labor Relations Board (1940) 114 F(2d) 611. This proposition was phrased as follows in the Pennsylvania Railroad Case: "And the desired inference is precluded for the further reason that respondent's right of recovery depends upon the existence of a particular fact which must be inferred from proven facts, and this is not permissible in the face of the positive and otherwise uncontradicted testimony of unimpeached witnesses consistent with the facts actually proved, from which testimony it affirmatively appears that the fact sought to be inferred did not exist. . . . . A rebuttable inference of fact, as said by the court in the Wabash Railroad Case [Wabash R. Co. v. De Tar (1905) 141 Fed 932, 935, 4 LRA (NS) 352], 'must necessarily yield to credible evidence of the actual occurrence.' And, as stated by the court in George v. Missouri P. R. Co. (1923) 213 Mo App 668, 674, 251 SW 729, 732, 'It is well settled that where plaintiff's case is based upon an inference or inferences, . . . the case must fail upon proof of undisputed facts inconsistent with such inferences.' . . ." (288 US at pp. 340, 341). In the Cupples Co. Manufacturers Case the court stated: ". . . evidence which merely furnishes grounds for suspicion and conjecture proves nothing, and . . . the Board, like a jury, may not disregard the uncontradicted testimony of unimpeached and credible witnesses." (106 F(2d) at p. 105.) In the Foote Bros. Gear & Machine Corporation Case the court said: "In reaching our conclusion we wish to make it clear that . . . (c) A statement which alone may afford substantial support for a fact finding may lose its weight entirely in the fact of uncontradicted facts inconsistent with it. . . ." (114 F(2d) at p. 622.)

In short the rules of logic and reasoning which are necessary to the accomplishment of the type of adjudication guaranteed under our system of law must be applied by the Commission, as by any trier of fact, in reaching its findings. Consolidated Edison Co. v. National Labor Relations Board (1938) 305 US 197, 83 L ed 126, 26 PUR(NS) 161, 59 S Ct 206; National Labor Relations Board v. A. S. Abell Co. (1938) 97 F(2d) 951; National Labor Relations Board v. Bell Oil & Gas Co. (1938) 98 F(2d) 406; Cupples Co. Manufacturers v. National Labor Relations Board, *supra;* Magnolia Petroleum Co. v. National Labor Relations Board (1940) 112 F (2d) 545.

straint or preventing free action. The phrase as here used does not necessarily mean that those exercising controlling influence must be able to carry their point. A controlling influence may be effective without accomplishing its purpose fully." This construction was accepted in Public Service Corp. v. Securities and Exchange Commission (1942) 129 F(2d) 899, 45 PUR(NS) 350. In Pacific Gas & E. Co. v. Securities and Exchange Commission (1942) 127 F(2d) 378, 44 PUR(NS) 97, the view of the court (Garrecht, J., dissenting) was that "subject to a controlling influence" meant mere susceptibility to a controlling influence and that in addition to the conditions specified in clauses (i), (ii), and (iii) of the statute there was a fourth and independent condition in view of which the Commission might find that an applicant was a subsidiary if the Commission thought merely that it was necessary or appropriate in the public interest or for the protection of investors or consumers that the applicant be subject to the obligations, duties, and liabilities of the act upon subsidiary companies of holding companies.[4]

"Subject to" means under the power or dominion of another. It is synonymous with subordinate, inferior.[5] "To control" means to exercise restraining or directing influence over; to dominate; regulate; hence, to hold from action; to curb; subject.[6] And "controlling," the present participial form of the verb, therefore means the act or fact of exercising restraining or directing influence over; it conveys the idea of process or continuance. Moreover, the word "influence" itself has a present par-

[4] It was persuasively pointed out by Judge Garrecht, dissenting, that such a construction of the act was not tolerable. He said:

"From the discussion in Congress at the time the act was under consideration and as well from the fair and ordinary meaning of the language, the phrase 'subject to a controlling influence' does not mean, as the Commission found and the majority opinion determined, that appellant was required to 'demonstrate' that its management and policies were not 'susceptible to control' by North American. 'Subject to a controlling influence' is not the equivalent of '*susceptible* to a controlling influence.' 'Susceptible' and 'subject' are not interchangeable or synonymous terms. The word 'susceptible' connotes an especial liability to mental or emotional impressions. Advisedly that expression was not used in the statute. But the word 'subject' is used, and here it occurs in relation with 'control,' and in that sense it can be correctly defined as meaning 'under rule, authority, or domination.' Thus, 'subject to a controlling influence,' as stated in the statute, is not the same thing as 'susceptibility' to a controlling influence as expressed by the Commission. One phrase refers to an actually existing state; the other might be applied to express some future condition which uncertain events might possibly bring about. In considering this aspect of the matter it is important to keep in mind that under the statute the Commission is in a position to act at once if ever the susceptibility should become an actuality, even if the Commission had theretofore granted petitioner an exemption at a time when the facts showed a lack of any actual and existing control or controlling influence.

. . . .

"In vesting the Commission with the duty of ascertaining 'control' or 'subject to a controlling influence' of one company by another Congress did not imply that a potential facility to exercise control was sufficient to establish such controlling influence. If this alone were sufficient the Congress would not have made provision for the exemption." (127 F (2d) at p. 391, 44 PUR(NS) at pp. 115, 116.) In respect of the fourth and independent condition which the majority construed the statute to include, Judge Garrecht added:

"It seems to me that the opinion of the Court has added to the act by judicial construction conditions not imposed by Congress and by which the Commission has been relieved of the obligations which requires that the findings be sustained by substantial evidence." (127 F(2d) at p. 392, 44 PUR(NS) at p. 117.)

[5] See Webster's New International Dictionary (2d ed. 1942) p. 2509, 3d column.

[6] Id. at 580, 3d column.

ticipial, *i. e.*, present continuing action, connotation.[7] It is defined to mean (as said in the first portion of the quotation from the Detroit Edison Case, *supra*) the act or process, or the power, of producing an effect without apparent force or direct authority. But it is further defined (this was not stated in the Detroit Edison Case) to mean *influence* by suggestion; the *influence* of heat upon life; hence, a considerable or an ascendant power arising from station, excellence of character or intellect, etc., sway, control, mastery, effect, force.[8] All of the foregoing dictionary definitions are trite but it is seemingly necessary to state them. In view of the common meaning of these words it is a contradiction in terms to say, as in the Detroit Edison Case, that "subject to a controlling influence" does "not necessarily mean that those exercising controlling influence must be able to carry their point." How can an influence be controlling, in the normal use of language, which does not control; and how can "subject to a controlling influence" be a mere susceptibility to a controlling influence as held in the Pacific Gas Case? I think that Congress in using the word "control" in clause (i) and the phrase "subject to a controlling influence" in clause (iii) of the act intended to differentiate, not between presently effective control on the one hand and mere susceptibility to control on the other—if it had intended such a distinction it could easily have used apt language to express it—but between two different types of presently effective control. I think that in clause (i) Congress intended to cover control through, so to speak, structural means, such as complete or majority ownership of capital stock, or devices such as combinations of stockholders, voting trusts, majority membership on proxy committees, interlocking corporate officers or directors; I think that by the phrase "subject to a controlling influence" Congress intended to describe such control as might result from the command of one mind over another, or from station or prestige, or from habituation to the policies of another. I think therefore that the phrase "subject to a controlling influence" is fairly to be taken to mean under a presently effective dominion.

The meaning of the phrase "management or policies" as used in the act must also be borne in mind. By "policy" is meant in the present context a settled or definite course or method adopted and followed by a government, institution, body, or individual.[9] The word "management" may refer to the act or art of managing, the manner of treating, directing, carrying on, or using, for a purpose; conduct, control. It may also mean, however, the collective body of those who manage or direct any enterprise or interest, the board of managers.[10] It is not to be assumed that Congress was using the word "policies" and the word "management" redundantly, and I think, therefore, that the latter meaning of "management" was the one intended.

Turning now to the question what

[7] The word "influence" is the present participial form (*influen-s,-entis*) of the Latin verb *influo, uxi, uxus, ere, meaning* "To stream in, throng in, invade."

[8] See Webster's New International Dictionary (2d ed. 1942) p. 1276, 1st column.

[9] Id. at 1908, 2d column.

[10] Id. at 1492, 3d column.

inferences may reasonably be drawn from the basic facts in the instant case: Stated in brief the basic facts from which the ultimate facts are by inference to be reached are the following: American Gas was organized by Bond and Share in 1906 out of Electric Company of America. Of the outstanding voting securities of American Gas 17.51 per cent are owned by Bond and Share; the remaining 82.49 per cent is in the scattered ownership of persons other than Bond and Share; no one of these other stockholders and no organized group thereof owns as much as 4 per cent. Until 1928–1931 Bond and Share, for substantial compensation, as fiscal agent supervised the financial affairs of American Gas; since that period there has been no financial supervision by Bond and Share—American Gas has handled all of its financing independently.[11] From the outset there were common directorships of Bond and Share and American Gas—this reached its highest point in 1926 when seven out of the fifteen members of the board of directors of American Gas were at the same time directors of Bond and Share or of companies in its system; after 1926 the number of common directorships lessened until at the time of the present inquiry (the hearing commenced June 12, 1940, and terminated, in the order of the Commission, May 12, 1941, 40 PUR(NS) 453), only two members of the board of American Gas are directors of or have any connection with Bond and Share or companies in its system. The same is true of the executive committee of American Gas; five out of a membership of seven were connected with Bond and Share in 1926 but at the present time only one is so connected.[12] The two directors of American Gas who are now connected with Bond and Share are Mr. C. E. Groesbeck and Mr. Frederick A. Farrar. Mr. Groesbeck is chairman of the board of both Bond and Share and American Gas and chairman of the executive committee of American Gas, but in such positions in American Gas he is without salary, desk, or office. Mr. Farrar is a director of both American Gas and Bond and Share but is in his eighty-sixth year and is retired. Prior to 1938 all of the members of the proxy committee of American Gas were persons who were also directors of Bond and Share or of one of its subdiaries but in 1939 there was only one such, and in 1940 none. There are not now and never have been any common officers of American Gas and Bond and Share or its subsidiaries. Certain of the present directors of American Gas were such during the period when Bond and Share was the fiscal agent for American Gas.[13] Prior to 1928

[11] American Gas has apparently made no short term loans since 1928 and there were no public securities offerings between 1931 and 1937 by American Gas or any of its subsidiaries. But since 1937 American Gas for itself and six of its subsidiaries has, without service by or consultation with Bond and Share or Ebasco Services, Inc. (the service subsidiary of Bond and Share), carried through refinancing operations aggregating $250,000,000 in par and face amount.

[12] It is to be noted that two members of a board of fifteen and one member of an executive committee of five is almost exactly the mathematical representation to which a stockholder holding 17½ per cent of voting securities is entitled. (The executive committee consisted of seven members in 1926, five now.)

[13] Mr. G. N. Tidd (with American Gas since formation in 1906).

Mr. Henry H. Wehrhane (on board of directors of American Gas since 1910).

loans were made by Bond and Share to American Gas and by the latter to Bond and Share subsidiaries; but since 1928 American Gas has not been indebted to Bond and Share nor have Bond and Share subsidiaries been indebted to American Gas. From 1912 to 1935 Bond and Share and American Gas were parties to group purchase contracts. From 1910 to 1932 American Gas was a party to a contract with an engineering firm for the rendering of advice, reports, and construction services to which contract Bond and Share and one of its subsidiaries were also parties; the fees for services were based on the actual work done for each company. (This engineering service is to be distinguished from the engineering service, referred to below, rendered by American Gas' own staff.) Since 1928 American Gas has continued to use investment and commercial banks, the original connection with most of which was formed in the period prior to 1928 when Bond and Share was acting as fiscal agent for American Gas. American Gas and Bond and Share have never had common auditors. Except in respect of the instant proceeding and a proceeding, referred to below, under § 11 of the act, the same law firm has represented and continues to represent Bond and Share and American Gas. In 1936 in pleadings in the case of Securities and Exchange Commission v. Electric Bond and Share Co,[14] wherein American Gas was a defendant, it joined with several codefendants in an allegation that they (including American Gas) were "subsidiary companies of the defendant Bond and Share . . . and none of said companies is entitled to exemption or to claim exemption as a subsidiary under the terms of § 2(a) (8) . . . of said act." From the outset of its organization American Gas has had its own managerial, operating and engineering staff (segregated in 1938—in compliance with the Public Utility Holding Company Act—into a newly created subsidiary of American Gas, American Gas and Electric Service Corporation); all of the managerial, operating and engineering functions (except for financial service until 1928–1931 as above described) of American Gas and its system have been performed by this staff, and this staff has performed no service for Bond and Share. Shortly after the formation of American Gas, Bond and Share assembled its own complete service staff, now segregated into its service subsidiary, Ebasco Services, Inc., American Gas has never (except for financial service until 1928–1931 as above described) received advice or service from the Bond and Share service staff or from Ebasco Services, Inc., and does not do so at the present time. The techniques of these two separate service staffs developed along different lines;

Mr. Harrison Williams (a director of American Gas since 1906).

Mr. Frank B. Ball (a director of American Gas since 1923; originally with the Electric Company of America, he came over into American Gas at its formation).

Mr. M. F. Millikan (commenced service with American Gas in 1914).

Mr. J. F. McMillan (with American Gas since 1925, commencing as assistant secretary and treasurer).

Mr. Duncan T. Campbell (with American Gas since 1907, when he came to Scranton Electric Company, a wholly owned subsidiary of American Gas).

[14] (1937) 18 F Supp 131, affirmed (1937) 92 F(2d) 580, 21 PUR(NS) 299, affirmed (1938) 303 US 419, 82 L ed 936, 22 PUR (NS) 465, 58 S Ct 678, 115 ALR 105.

their methods of organization and functioning, engineering practices, and commercial policies have presented and now present a definite contrast. The management and policies of American Gas, including the technique of generation, transmission, and distribution of electric energy, construction standards, uniformity of practices and operations, retention or nonretention of nonelectric utility properties, depreciation policy, rate structure policy, merchandising policy, policy as to extent of investment retained in subsidiaries, and financing (since 1928–1931)—all of these may for convenience be referred to as business and engineering policies—are different from those of Bond and Share; the differences are more explicitly set forth in the margin.[15] In 1938–1939 Bond and Share, through Mr. Sydney R. Inch its president, attempted to cause Mr. G. N. Tidd,

[15] American Gas utilizes large units and high pressures and temperatures in its generation of electric energy while Bond and Share tends more to the use of small units and lower pressures and temperatures.

American Gas utilizes steel in its transmission line construction to a far greater extent than Bond and Share.

American Gas uses power transformers of a lower insulation or voltage class than the actual operating voltage of the transmission line accompanied by lightning protection equipment. The practice on Bond and Share properties is substantially the reverse, those companies using transformers of a voltage or insulation rating considerably above the nominal voltage of the system.

American Gas has a uniform practice on all of its properties for relay protection while Bond and Share properties have no unified practice.

American Gas has a system of standards and specifications which are used regularly by all of its operating companies in the course of their operations. These standards and specifications cover practices in distribution standards, meter standards, safety manuals, material, and methods used in line construction, for power transformers, power and control cables, etc. In many of these phases Bond and Share has no corresponding practices which are uniform for all of its subsidiaries.

Companies in the Bond and Share group are divided into groups with a sponsor for each group who acts as a liaison officer between the local companies of the group and the central organization; this type of organization does not exist in the American Gas group, which latter company and its service company have direct contact with its operating subsidiaries.

It has been the policy for years of the American Gas to dispose of properties that supply utility service other than electric service while there are many companies in the Bond and Share group that provide gas and transportation service. In 1930, 98 per cent of the gross revenue of the American Gas group was derived from electric service and in 1939, 99 per cent of the gross revenue was from electric service. Substantial portions of the revenue of the subsidiaries of Bond and Share are derived from services other than electric service.

American Gas has a different policy with respect to merchandising of electrical appliances from that of the Bond and Share group.

American Gas has a uniform policy with respect to rural electrification while Bond and Share has no such uniform policy.

American Gas has on its properties universally a block type of residence rate and uniform rate structure for commercial and large power consumers while companies in the Bond and Share group have a variety of types of rates.

American Gas furnishes a complete advertising service to its susidiaries while Bond and Share does not.

Bond and Share furnished supervisory service to its subsidiary companies at a figure higher than cost until 1935 while American Gas has furnished such service to its subsidiaries at cost since 1912 with the exception of construction engineering service which it has furnished at cost since 1932.

American Gas has a different depreciation policy for its subsidiaries than Bond and Share.

It has been the practice of American Gas to retain not only the common stocks but substantial amounts of the bonds and preferred stocks of its operating subsidiaries and while it has made substantial reductions in its investments in its subsidiaries through sales of bonds and preferred stocks of such subsidiaries, it has at all times maintained and still maintains a substantial investment in such subsidiaries represented by both senior securities and common stocks. On the other hand, Bond and Share and its subsidiary holding companies have sold all or the major portion of the bonds and preferred stocks of operating companies acquired by them.

president of American Gas and a member of its board of directors and executive committee, and Mr. Joseph M. Burchill, a vice president and member of the board, and Mr. M. F. Millikan, a vice president, house counsel and member of the board, and through them American Gas, to abandon its intention of filing under § 11 of the act a formal integration plan of its own, i. e., to comprehend its own system and nothing else. Nevertheless, resolutions to file the independent plan of American Gas and to file the application of American Gas under § 2(a)(8) to be declared not a subsidiary of Bond and Share (the application which resulted in the present proceeding) were adopted by unanimous vote of the board of directors of American Gas, including the vote of Mr. Farrar and Mr. Groesbeck the two directors of American Gas who are also directors of Bond and Share. This episode, as shown by the record, is described in greater detail in the margin.[16] In 1939 Mr. Tidd resigned from the board of di-

[16] Section 11, subsection (b), of the Public Utility Holding Company Act of 1935, makes it the duty of the Commission to require each registered holding company and each subsidiary thereof to take such action as the Commission shall find necessary to limit the operations of the holding company's system of which such company is a part to a single integrated public utility system, and to such other businesses as are reasonably incidental, or economically necessary or appropriate to the operations of such integrated public utility system. Subsection (e) permits any registered holding company or any subsidiary thereof to submit a plan to the Commission for the divestment of control, securities, or other assets, or for other action by such company or subsidiary thereof for the purpose of enabling such company or subsidiary to comply with the provisions of subsection (b). Subsection (e) further provides that if the Commission shall find such plan, as submitted or as modified, necessary to effectuate the provisions of subsection (b) and fair and equitable to the persons affected by such plan, the Commission shall make an order approving such plan; and the Commission, at the request of the company, may apply to a court to enforce and carry out the terms and provisions of such plan.

Upon the passage of the act, American Gas received a letter from the chairman of the Commission sent to all important holding companies under date of August 3, 1938, urging all such companies to file, by December 1st either a formal integration plan under § 11, subsection (e), or at least a tentative suggested program for complying with § 11. American Gas was thus confronted with the question whether it should adopt an independent integration policy so that the provisions of the act and the Commission's orders to effectuate them should be addressed to American Gas and its system directly and separately and not as a part of the system of Bond and Share. Believing that its system was one which met the requirements of § 11, and that it was accordingly in a position to file a formal plan seeking an independent integration, American Gas replied on August 8 through Mr. Tidd to the letter of August 3, advising the Commission chairman that a formal plan would be filed; and the officers of American Gas went forward with the work of preparing such a plan. Up to that time there had been no consultation with Bond and Share and American Gas sought no such consultation. At the end of October, 1938, Mr. Groesbeck told Mr. Tidd that the members of the staff of Bond and Share were at work on a reply for Bond and Share to the letter of the Commission of August 3rd and invited Mr. Tidd to luncheon to be advised of its nature. Mr. Tidd went to the luncheon accompanied by Mr. Philip Sporn (vice president and chief engineer of American Gas and Electric Service Corporation, a vice-president of American Gas itself, and chief engineer of all of the subsidiary companies of American Gas). Mr. Inch was present. He showed a rough outline, including sketch maps, of an informal proposal which he had in mind filing on behalf of Bond and Share; this seemed to include, among the properties dealt with, those of American Gas. This material was taken away by Mr. Tidd and Mr. Sporn and after further examination of it by the latter and consultation between the officers of American Gas, it was determined that it was neither wise nor proper in the interest of American Gas for any of its officers to express an opinion as to the feasibility of the tentative proposals in the draft furnished by Mr. Inch—this for the reason that the proposals seemed to the officers of American Gas to be based upon premises opposed to the position which it seemed necessary for American Gas to take with respect to its status under § 11. Therefore, Mr. Tidd, Mr. Millikan, Mr. Sporn and Mr. Burchill went to the offices of Bond and Share and met Mr. Groesbeck, Mr. Inch, and

rectors of the American Power and Light Company (a subsidiary of Bond and Share) in part because he could not agree to a proxy statement of American Power and Light Company to the effect that American Gas is an affiliate of Bond and Share.

What inferences may reasonably be drawn from these basic facts: I think that they support no reasonable inference of presently effective domination by Bond and Share of American Gas management or policies and that they reasonably support a contrary infer-

a Mr. Murphy and a Mr. Phillips of the Bond and Share organization. At this conference Mr. Inch urged upon the four officers of American Gas that they abandon the intention of filing a formal plan under § 11 and expressed the belief that such a course was a most unwise one. But the four officers of American Gas expressed an equal conviction that filing a formal plan under § 11 was a sound and appropriate course for American Gas and left the conference. It was then decided as a result of this disclosure of opposing policies and views of the officers of American Gas and those of Bond and Share that it was inappropriate that American Gas should be represented in § 11 proceedings before the Commission by the same firm of lawyers which was representing Bond and Share, and for that reason the officers of American Gas promptly selected and engaged a different firm to represent American Gas in the § 11 proceeding and in the instant proceeding. The officers of American Gas then continued their work on the formulation of the formal plan and an outline in some detail of its nature and contents was made up and submitted to a meeting of the board of directors of American Gas on November 7, 1938. At that meeting the vote of the board, including Mr. Groesbeck and Mr. Farrar, was unanimous in favor of the independent integration policy and formal plan of American Gas.

The tentative plan of Bond and Share was filed on December 1, 1938. It included the American Gas system in the integration proposals of Bond and Share. Later Bond and Share filed an amended tentative plan which included American Gas in its integration proposal and which required exchanges, sales, and purchases of properties of companies within the Bond and Share system, including American Gas. Mr. Inch testified before the Commission in the Bond and Share integration proceeding on September 1, 1940, as follows:

Q. Corporately or as a matter of ownership, how could the regrouping shown by Map No. 3 be made? Is there in each group a diversity of holding company ownership?

A. There is in every group a diversity of holding company ownership. That of course means that there would have to be in this integration plan, as probably in any integration plan for any companies, changes in ownership of property, exchanges, sales, purchases, and so forth. The fact that all of the holding companies shown here—the four principal holding companies own the securities of their subsidiaries by very large majority, representing in nearly all cases all or substantially all of the common stock, puts the intermediate holding companies, of course, in a position to coöperate in any plan for any such change in ownership as might be required. In turn, the Electric Bond & Share Company, which is the largest owner of the holding companies which own these properties, is, again, in a position to initiate and carry through any such changes of ownership as might be found desirable or necessary in bringing about the reintegration of the Bond & Share system.

Q. Are all of these utility properties shown on Map No. 3 now parts of the Electric Bond & Share system, including for the moment in that system the American Gas & Electric Company?

A. Yes, they are.

Q. And it is for that reason that you think that Electric Bond & Share could function, with respect to the groups, just as the holding companies might function with respect to the properties within a group?

A. That is correct.

Q. Who is the largest holder of the voting securities in each of these intermediate holding companies?

A. The Electric Bond & Share Company.

Q. In each case, does that holding represent more or less than 10 per cent?

A. In every case it represents more than 10 per cent of the voting securities of the intermediate holding companies concerned.

Q. Is there in any case a comparable block of voting securities outstanding in other amounts?

A. There is no comparable situation in any of these intermediate holding companies to the stock position of Bond & Share in the said companies.

Q. Do you believe it would be feasible to regroup these utility properties in the manner here portrayed?

A. I believe that with the approval of the Commission it would be not only possible but probably simple.

From the foregoing it is apparent that it was the intention of Bond and Share, had American Gas agreed not to file a formal plan of its own under § 11, to regroup the properties of American Gas if necessary to the reintegration of Bond and Share.

ence. That American Gas was organized by Bond and Share thirty-four years before the commencement of the hearing in this case is too remote and abstract a circumstance alone to support an inference that the management or policies of American Gas were at the time of the inquiry subject to a controlling influence by Bond and Share. The mere organization of one corporation by another is but a paper transaction, in and of itself unproductive of influence except through the impact of the personalities in the organizing corporation upon those of the organized. That Bond and Share was fiscal agent of American Gas from the time of its organization until the period 1928–1931 proves, without more, nothing now, that fiscal agency having terminated and American Gas since that period having had an established credit of its own and having alone carried out its own financing. The Commission urges that the fiscal agency of Bond and Share was a control of the purse prearranged at organization time and that it was hence the result, not the cause, of influence. But even if that is true, control of the purse is now gone. The presence in 1926 and theretofore upon the board of directors, executive committee and proxy committee of American Gas of a substantial number of persons who were connected with Bond and Share is evidence of a past possible means of influence by Bond and Share but is not, without more, evidence that the present management or present policies of American Gas are subject to a dominating influence by Bond and Share. And in view of the limited number of common directorships, executive committee memberships and proxy committee memberships at the present time, such a means for influence has greatly lessened. That certain of the present directors of American Gas were such during the period when Bond and Share was fiscal agent for American Gas also, in my mind, proves, without more, nothing now. If they were subservient then, the ascribed cause of that subservience has passed away. The debtor relationship which American Gas once bore toward Bond and Share has long since terminated, as has participation in group purchase and group engineering contracts. If it can be inferred that these relationships were once the cause of subservience, that cause has long since passed away. The fact of continued use of the same commercial and investment banks by American Gas and Bond and Share is not evidence of subjection of the former to the influence of the latter; that two companies deposit their funds in and borrow at or invest through the same bank is, to my mind, an irrelevant circumstance, one that does not reasonably support an inference that one company is influenced by the other; at the most such a circumstance is equivocal—if influence exists, in which direction does it operate? The existence of a common law firm (except in the § 11 proceeding and in the instant proceeding) of itself proves nothing. Lawyers advise as to the law and as to legal policy; they litigate and draw instruments. But in the absence of evidence to the contrary, it is a fair presumption of fact that they do so singly to the interest of each client, and in the event of conflicting interests withdraw from one or an-

other. There is no evidence that the law firm in question was retained by Bond and Share to advise it and American Gas as a part of the system of Bond and Share; it is a fair inference from the facts in the case that each company independently retained the firm. There is no evidence that the law firm in question ever advised American Gas against its interest and in favor of Bond and Share, or lent itself to influencing the management or policies of American Gas at the instance of Bond and Share. The scattered character of American Gas stock ownership outside the 17.51 per cent owned by Bond and Share might, in the event of indifference or absence of common interest on the part of other stockholders or in the event of a combination of stockholders, result in a preponderant voting control in Bond and Share. But that is one of the types of control which, as said at the outset of this opinion, I think Congress intended to cover in clause (i) of § 2(a)(8) of the act, and, as I pointed out (in footnote 2), the Commission does not contend that American Gas is "controlled" by Bond and Share within the meaning of that word in clause (i). Moreover, there is no evidence in the case that either at the time of the inquiry or at any other time Bond and Share had preponderant voting power from any such event. The concession in the pleadings in the suit of Securities and Exchange Commission v. Electric Bond and Share Co., above referred to, that American Gas was a subsidiary of Bond and Share is to my mind of no probative value in respect of the issue in the instant case, first because it was made as of 1936 and second because it is a mere conclusion of counsel or of corporate officers and one not made on the record in the instant case; the Commission concedes in its brief that it itself does not consider this concession to be of conclusive character.[17]

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[17] The Commission asserts that Mr. Tidd and Mr. Burchill testified that "while petitioner [American Gas] has been subject to a controlling influence by Bond & Share, that condition ceased to exist when Mitchell [Mr. S. Z. Mitchell, a former director and member of the executive committee of American Gas and a substantail stockholder] retired in 1933 as chairman of petitioner's board." The Commission then argues that Mr. Mitchell's retirement did not signify any change in the relationship between the two companies because Mr. Groesbeck succeeded him. But examination of the record shows that Mr. Tidd testified as follows:

Q. Did Electric Bond & Share Company have a controlling influence over the American Gas & Electric Company at any period in the American Gas & Electric Company's history?

A. I think it did, very early, when the company was first formed, although I will have to qualify that again, because I think for the first two years it was under the charge of Mr. Doherty as President. The Bond & Share looked more particularly after the money requirements. Mr. Doherty had charge of the operation for two years.

. . . . . .

Q. How long would you say that the controlling influence exercised by the Electric Bond & Share Company over the American Gas & Electric Company lasted?

A. Well, I think *if there was any controlling influence* it was in the way of raising money, but the Bond & Share never have operated our properties. [Italics supplied.]

Q. How long would you say that controlling influence that you referred to lasted?

A. Well, *if raising of money is a controlling influence,* for selling of securities, I think that ceased at practically the time that Mr. Mitchell left. [Italics supplied.]

Q. 1933?

A. 1933.

The record shows Mr. Burchill's testimony to be as follows:

Q. Without asking you for a legal conclusion and certainly not implying one of my own in this question, let me ask you this: *Assuming that there might have been at one time relationship between Bond and Share and American Gas which might have been considered as lodging in Bond and Share a controlling influence over American Gas, do you*

In my opinion the foregoing facts, without more, whether looked at singly or altogether, cannot be said reasonably to support an inference that the management or policies of American Gas are under a present domination by Bond and Share. It may be conceded that, from impact of personalities in Bond and Share upon those in American Gas at organization time and from such circumstances as the fiscal agency, the presence in the past upon the board of directors, executive committee and proxy committee of American Gas of a substantial number of persons who were connected with Bond and Share, the presence now upon the board of American Gas of some directors who were such during the period of the fiscal agency, the debtor relationship and group purchase and engineering contracts, and perhaps from other relationships thus far commented upon, there *might possibly* have been engendered in American Gas policies or tendencies which

think it has disappeared, and if so, when? [Italics supplied.]

A. I am quite convinced that it has disappeared; *on the assumption that there was something which you asked me to assume,* I am quite convinced it has disappeared, and I am equally clear in my mind that it came to an end in 1933, when Mr. S. Z. Mitchell left the board of directors and left the executive committee. [Italics supplied.]

Q. That was shortly after all the fiscal services of Bond and Share had, themselves, been discontinued as far as American Gas is concerned?

A. Yes, the fiscal services of any importance, as has been testified, were pretty well terminated, the public offering of securities, at any rate, in 1928.

The Examiner:—Why should the disappearance of this assumed control have coincided with the departure of Mr. Mitchell?

The Witness:—Well, because it has never been clear in my mind, I don't know whether it is in anybody else's, whether Mr. Mitchell in the action he took in the American Gas and Electric Board was acting as the representative of Electric Bond and Share, *but assuming for the purpose of answering your question that he was,* Mr. Mitchell, because of his personality, because of his intimate association with the company from its beginning, because of his large personal holding in the company, I think was able to exert an influence the like of which no other one man could exert, and the executive committee in that year, 1933, was made up of seven members. When Mr. Mitchell resigned from the Board and from the executive committee the membership was reduced to six, and it was subsequently reduced to five, and today there is only—and since,—well, for the last three years, at any rate, there has been only one person on there that I would in my nonlegal fashion describe as the Bond and Share designee—Mr. Groesbeck, I don't know whether he is or not, but that is my reason, if I have answered the question, that Mr. S. Z. Mitchell because of his personality, I think because he was in a position, whether he did or not, to influence the American Gas and Electric Board in a way that no other person since can. [Italics supplied.]

The Examiner:—You feel that because of his earlier associations with Electric Bond and Share and his large holdings he would be more inclined to regard American Gas and Electric policies from the Bond and Share viewpoint than any successor would?

The Witness:—No. I hope I haven't misled you on that. I have considerable doubt that he did so regard it. I happen to feel that American Gas having come into being as early as it did in 1906, when the Bond and Share Company was only a year or so old, that as the companies have gone ahead, I really believed that Mr. Mitchell looked on one as one thing and Bond and Share as another, in both of which he had two kinds of interest, financial interest, and the interest of a builder and—

By Mr. Ballard

Q. (Interposing) Director?

A. Director, *but I was assuming for the purpose of answering your question* that Mr. Mitchell, inasmuch as he was a paid officer of Electric Bond and Share and was not a paid officer of American Gas, that it might be assumed or argued that when he came to American Gas Board meetings and sat there and talked he was representing Electric Bond and Share. [Italics supplied.]

Q. Of course, he was the chief executive of Bond and Share through the decades when Bond and Share was doing the financing for American Gas, was he not?

A. That is correct, yes, sir.

The foregoing makes clear that the gist of the testimony of these two witnesses was merely that *if* there was influence and *if* Mr. Mitchell in the action he took on the board of American Gas was acting as a member of Bond and Share, the influence ended with his resignation.

reflected and still reflect Bond and Share's desires. But as a matter of law the court is concerned in this case not with mere possibilities but with reasonable inferences, and I think that not by reasonable inference but only by assumption and conjecture can there be drawn from the facts thus far commented upon the conclusion that they show past relationships which have resulted in a personnel and tradition which make American Gas presently responsive to Bond and Share's desires. And it will be noted that if the conclusion reached by the Commission is to stand, it must be drawn from the facts thus far commented upon and not from the remainder of the basic facts, upon which I comment below.

Of the basic facts in the case only the following remain for discussion: The business and engineering policies of American Gas (the technique of generation, transmission, and distribution of electric energy, construction standards, uniformity of practices, and operations, retention or nonretention of nonelectric utility properties, depreciation policy, rate structure policy, merchandising policy, policy as to extent of investment retained in subsidiaries, and policy as to financing (since 1928–1931)) have from the outset been and are now different from those of Bond and Share; these business and engineering policies have been carried into effect from the outset by American Gas's own separate staff; the attempt of Bond and Share to cause the officers and directors of American Gas to submit to the integration policy of Bond and Share, rather than to carry out its own integration policy through the filing of a formal plan under § 11 of the act, failed through unanimous vote of the board of directors of American Gas including the two who were also directors of Bond and Share; the president of American Gas resigned from the board of American Power and Light Company rather than agree to a proxy statement of the latter to the effect that American Gas is an affiliate of Bond and Share.

These items of fact cannot be ignored—findings cannot be arrived at by considering only part of the evidence—and they involve both the management and policies of American Gas. These facts, while consistent with all of the other facts in the case, are, in my opinion, wholly inconsistent with the conclusion which the Commission has drawn, i. e., that American Gas is "responsive to Bond and Share's desires." When looked at in terms of the accepted definition of substantial evidence as such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, these facts support not the inference drawn by the Commission but its opposite, i. e., the finding which American Gas urges ought to have been made in the case—that the "management or policies" of American Gas "are not subject to a controlling influence" by Bond and Share. How can it sensibly be said that the business and engineering policies of American Gas are subject to a controlling influence by Bond and Share when those policies have from the outset been and are now different from those of Bond and Share? Is it to be supposed that Bond and Share compelled a differentiation? There is no evidence that it did. How can it sensibly be said that the integra-

tion policy of American Gas was subject to a controlling influence by Bond and Share when it also was different? How can it sensibly be said that the management, including the business and engineering staff of American Gas, is subject to a controlling influence by Bond and Share when such management and staff have carried out and continue to carry out business and engineering policies different from those of Bond and Share? How can it sensibly be said that the management of American Gas is subservient to the influence of Bond and Share when the board of directors, including two who are also directors of Bond and Share and who would, according to the theory of the Commission, vote responsively to the desires of Bond and Share, unanimously vote to carry out an integration policy different from that of Bond and Share,[18] and when the president of American Gas resigns a directorship in a Bond and Share subsidiary rather than agree to a statement that American Gas is an affiliate of Bond and Share? To the contrary of supporting the conclusion of the Commission in the case, the significant facts confirm a statement made by Mr. Inch in respect of the relationship of Bond and Share to American Gas that "In that company, we still hold a minority interest but we do not in any way supervise its operations nor have we ever done so. . . . first of all, the Bond and Share Co. used its money and its credit to go out and get some operating properties to put together. When they were put together in this particular case it organized the American Gas & Electric Co. *and then that went off on its own.* . . ." (Italics supplied.)[19]

The Commission attacks the signif-

[18] It cannot be determined from the record whether Mr. Groesbeck at the luncheon to which he invited Mr. Tidd and at which Mr. Inch and Mr. Sporn were present, acquiesced in the view expressed by Mr. Inch. So far as the record shows, he may have invited Mr. Tidd as a mere accommodation—for a discussion of the question to be raised by Mr. Inch—or he may have then shared, or at the moment acquiesced in, Mr. Inch's view. As the incident is thus equivocal as to Mr. Groesbeck's then attitude, no inference as to the same can fairly be drawn from it. But assuming that in this luncheon discussion Mr. Groesbeck was influenced by Mr. Inch it is clear that when the time came to vote as a director of American Gas he threw off that influence and voted in accordance with the views of the other directors of American Gas. Therefore, if the record shows anything concerning his being influenced, it shows that he was influenced either by his own judgment or by that of his fellow directors in American Gas and not by Bond and Share.

It is noteworthy that there is no evidence in the record, and no contention in the case, that any of the directors or officers of American Gas are or have been lacking in independence of judgment or in faithfulness to the interest of American Gas in any manner either critical or incidental; and in view of the undisputed success of American Gas as a business enterprise (the record shows that American Gas has never since its organization suffered default or delay in the payment of interest or preferred dividends nor any interruption of dividends on common stock since such dividends were inaugurated in 1912) a contrary inference is warranted. Moreover, the long periods over which many of the directors have served tend to prove them independent and faithful. Long continued occupancy of responsible managerial positions in business is not often the result of subservience or unfaithfulness.

It is but fair to add that while it is shown in the record that Mr. Inch sought to persuade American Gas, i.e., its officers and directors, to act in accordance with the integration policy of Bond and Share, there is no evidence and no suggestion in the case of impropriety on his part or that he knew or thought that such a course would be against the interest of American Gas and its shareholders, creditors, and consumers.

[19] This statement of Mr. Inch, which was stipulated into the present record, was made on March 28, 1935, before the Committee on Interstate and Foreign Commerce of the House of Representatives, in connection with the hearings then being held by that committee prior to enactment of the Public Utility Holding Company Act of 1935.

icance for the independence of American Gas from a controlling influence by Bond and Share of the items of fact now under discussion not by denying them but only by contending that the policies involved are not of vital importance. But this contention is I think clearly without warrant. The business and engineering policies above described of a public utility obviously involve the very reason for being and way of life of such a company and determine its success or failure for stockholders, creditors, and consumers. And the integration policy of a registered holding company—which, as explained above, American Gas itself is, whatever the outcome of this case—is vital to its life, to the preservation of its properties, under the "death sentence" provision of the act. It is apparent from what is stated in footnote 16 that it was the intention of Bond and Share, had American Gas agreed not to file a formal plan of its own under § 11, to regroup the properties of American Gas if necessary to the reintegration of Bond and Share.

If, under the facts in this case—where the company alleged to be exercising controlling influence owns but 17.51 per cent of the voting stock of the alleged subsidiary, where but two out of the fifteen directors of the alleged subsidiary have any present connection with the other company, where there is no relationship of debtor and creditor and no present financial supervision by the alleged controlling company, where the business and engineering policies of the alleged subsidiary are materially different from those of the alleged controlling company and are carried out by a separate staff, and where the board of directors of the alleged subsidiary, including two members who are also directors of the alleged controlling company, are shown to have acted, in a matter vitally affecting the integration policy of the two companies, in accordance with the interest of the alleged subsidiary and contrary to the desire of the alleged controlling company—if in such a case it is proper to hold that the alleged subsidiary is in fact a subsidiary, what case can arise under the statute in which a nonsubsidiary status will be declared? Refusal by the Commission to recognize nonsubsidiary status in such a case as the instant case is equivalent, I think, to writing into the statute a fourth independent condition, such as was named in Pacific Gas & E. Co. v. Securities and Exchange Commission (1942) 127 F (2d) 378, 44 PUR(NS) 97, which in effect puts it within the unfettered discretion of the Commission—without reference to the evidence—to determine that a subsidiary status exists.

I am forced to the view in this case that the conclusion of ultimate fact of the Commission has been reached by assumption and conjecture rather than according to inference rationally drawn from the basic facts. There is, to my mind, no coherent relationship between the basic facts and the conclusion reached by the Commission. The decision of the Commission, in my opinion, denies to American Gas the benefit of the rational significance of the basic facts which is that the "management or policies" of American Gas "are not subject to a controlling influence, directly or indirectly," by Bond and Share. I think the order of the Commission should be reversed.

WISCONSIN PUBLIC SERVICE COMMISSION

Joseph F. Barta et al.

v.

City of Two Rivers

[2-U-1880.]

Rates, § 429 — Municipal plants — Extraterritorial service — Tax factor.

1. That rural customers beyond city limits benefit from tax rates lower than those in the city has no bearing on municipal electric plant rates, p. 185.

Rates, § 429 — Municipal plants — Extraterritorial service — Load factor.

2. The necessity of installing a new transformer to provide adequate service because of increased load is not a proper factor for consideration in determining the application of municipal plant urban or rural electric rates, p. 185.

Rates, § 206.2 — Unit for rate making — Municipal plant — Urban and rural service.

3. A municipal electric plant's rule dividing urban and rural customers for rate making on the basis of urban secondaries rather than of corporate limits should be maintained, p. 185.

Rates, § 429 — Municipal plant — Extraterritorial service — Cost differential.

4. A municipal electric plant may charge rural customers 125 per cent of the urban rates when the differential of 25 per cent between the urban and rural rates constitutes the reasonable measure of the average difference in cost of service to urban and rural customers, p. 186.

[April 20, 1943.]

COMPLAINT *against municipal plant electric rates for extraterritorial service; existing rates held unreasonable, new rates prescribed, and complaint dismissed.*

By the COMMISSION: Joseph F. Barta and twenty-six other persons residing in Edgewood subdivision, town of Two Rivers, Manitowoc county, on November 28, 1942, filed a complaint with the Commission pursuant to § 196.26, Statutes, that electric rates of the city of Two Rivers, Manitowoc county, as a public electric utility, applicable to service rendered such complainants were unreasonable. A notice of investigation and hearing was issued on December 3.

Hearing: January 4, 1943, at Two Rivers before Examiner Calmer Browy.

APPEARANCES: Joseph Barta et al., Julius Althen, and John Schmitt, by Bert L. Larkin, Attorney, Two Rivers; city of Two Rivers, by John P. Hoffman, City Manager, Alfred Allie, City Clerk, Paul Capraro, Manager of the light plant, F. W. Dicke, City Attorney, and F. G. Dicke, Assistant City Attorney.

At such hearing the city moved that the scope of the proceeding be expanded to include consideration of rates to all electric customers of the municipal utility who reside outside the city limits. The city expressed a desire to have rates established for service to such customers equal to 125 per cent of urban rates. Evidence at the hearing showed that some customers outside the city limits are served at urban rates, while the rest are served at rural rates.

By order of January 30th the motion of the city was granted and notice of further hearing was given.

Further hearing: February 18, 1943, at Manitowoc before Examiner Calmer Browy.

APPEARANCES: City of Two Rivers, by F. W. Dicke, City Attorney, Fred G. Dicke, Assistant City Attorney, John P. Hoffman, City Manager, and Paul Capraro, Superintendent of Electric Utility, and Alfred O. Allie, City Clerk; Joseph Barta and certain other complainants, by Bert L. Larkin, Attorney, Two Rivers.

In a previous proceeding (2–U–1653, Re Two Rivers (1940) 23 Wis PSC 225–227) we denied the application of the city of Two Rivers as a public electric utility for authority to charge customers outside the city limits its 125 per cent of the urban rates. Such denial was by order of December 5, 1940. We pointed out in that order that the only justification given by the city for the proposed change in rates was a desire to make the city limits the line of demarcation between urban and rural customers. We summarized testimony by our rate department in that proceeding which showed "that the cost of rendering service and the ratio of investment to revenue was about the same for customers inside the corporate limits and for those customers outside of the corporate limits served by urban secondaries. Were the rates for those just beyond the limits to be increased as proposed, the ratio of investment to revenue would be reduced to 1.63, less than the city customer ratio of 2.03. The utility's rule for extensions provides a ratio of investment to revenue of 3 to 1. For customers now served on rural rates, that is, those customers outside the city served by primary extensions and who use individual transformers, the ratio of investment to revenue is 2.34. The proposed schedule would effect a reduction to these customers, and the ratio (investment to revenue) would be increased to 2.96, less than the 3 required for free urban extension." In such order we also stated that the city had failed to show that it had any particular difficulty with or additional expense for service outside the city limits or that the investment cost to serve customers outside the city limits warranted the change in rates. We concluded that the proposed rate change was without justification and would readily lead to discrimination.

The city of Two Rivers has a defini-

tion of rural customers in its rules which is standard for most of the utilities in the state. This definition is:

"A rural customer is defined as a purchaser of electric service who can be adequately served from one transformer of not more than 7½ kilovolt-ampere capacity; and who uses the service in the conduct of one enterprise, or institution, located outside of the limits of a city or village or community with similar characteristics at such a distance that it cannot be adequately served from the secondary lines of the rural distribution system (farmers located within municipal limits or who can be adequately served from the urban secondary distribution system have the option of the rural rate or the urban rate under the relevant extension rules)."

This rule was established for Two Rivers by our order of December 14, 1936, in Docket 2–U–891; Re Two Rivers, 14 Wis PSC 452–474.

The urban residential lighting and combination service rates at Two Rivers are:

Fixed Charge
50 cents net per month, plus
Energy Charge
First 50 kw. hr. per month 2.5 cents net per kw. hr.
Next 150 kw. hr. per month 2.0 cents net per kw. hr.
More than 200 kw. hr. per month 1.5 cents net per kw. hr.
Minimum Monthly Bill
The minimum monthly charge under the foregoing rate for lighting service, including the use of motors of two horsepower or less individual capacity and appliances including stoves of less than 2,000 watts individual capacity, shall be 50 cents net per month.
For heating and cooking installations above 2,000 watts individual capacity, the minimum monthly charge (including the above fixed charge plus energy at the foregoing energy rates) shall be $1.50 net per month.
Prompt Payment of Bills
Customers' monthly bills will be computed at the net rates and there will be added to the total net bill a sum equivalent to 10 per cent of the net bill, but in no case will this amount be more than $1.05. All customers will be billed each month and all bills paid on or before ten days from the date thereof will be discounted to the amount determined by applying the net rates.

The rural electric rate schedule of the Two Rivers municipal electric utility is applicable to rural users requiring not more than a 7½ kilovolt-ampere transformer with all energy supplied through a single meter. The schedule is:

Fixed Charge
80 cents gross, 75 cents net per month, plus
Energy Charge
First 50 kw. hrs. per month 6.0 cents gross, 5 cents net per kw. hr.
Next 150 kw. hrs. per month 3.5 cents gross, 3 cents net per kw. hr.
More than 200 kw. hrs. per month 2 cents net per kw. hr.
Minimum Monthly Bill
For lighting and small appliance use only the fixed charge shall apply. With cooking and heating load in excess of 2,000 watts the charge shall be $2.25 gross, $2 net. With motor loads totaling in excess of two horsepower the amount of 55 cents gross, 50 cents net, per additional horsepower connected will be added.

The 1942 annual report of the Two Rivers municipal electric utility shows seventy-two rural customers, forty-five of whom are served under the rural lighting rate, twenty-five under the urban rate, and two under the power rate. Included among the forty-five customers served under the rural lighting rate are the complainants who reside in a plat, the center of which is about one-third mile west of the city limits. The area is northwest from most of the city and is variously called Edgewood subdivision, Edgewood plat, and Schmitt Brothers subdivision. The customers

in the subdivision are grouped in a compact area within a radius of two blocks.

In behalf of the complainants, testimony was given by John Schmitt, Two Rivers, one of the two brothers who platted the subdivision and constructed most of the houses therein. City witnesses were the city manager, the water and light superintendent, and the city clerk, who is also auditor of the municipal utility.

[1–3] The city attempted by evidence to justify a change in the definition of rural customers to be any noncommercial or nonpower customer residing outside the city limits. City witnesses cited elements of increased cost in serving customers located in rural territory compared with customers in urban territory such as additional meter reading, collection, and maintenance costs and line loss. Unquestionably these elements of cost increase with the distance from the central plant and are higher to serve a customer one-half mile from the plant than to serve a customer only one block from the plant. However, such costs are not appreciably higher to serve a customer located beyond the city limits than to serve his neighbor across the street inside the city limits when both are served from city secondaries. After much experience with this problem and with the approval of most engineers and rate men, the Commission concluded that the basis for dividing urban and rural customers should not be the city or village limits but whether adequate service can be furnished from urban secondaries.

The fact cited by city witnesses that rural customers beyond the city limits benefit from tax rates lower than those in the city has no bearing on rates for electric service. Rates of a municipal or other public utility must be established only to provide adequate revenues to defray the expenses of rendering service including a fair rate of return. When rates are so fixed, city customers of a municipal utility will not be adversely affected.

The water and light superintendent in his testimony cited some instances in which he alleged that the existing definition of rural customers had resulted in unreasonable discrimination. He gave an example of a customer one block beyond the city limits who could be adequately served from a transformer serving a group of customers inside the city so that the urban rate would apply to such customer. He then assumed a change in the situation with the construction of a number of houses in the immediate neighborhood a block outside the city limits. He stated that after the limit of an existing transformer was reached, it would become necessary to install a new transformer in this new section to provide adequate service because the increased load could not be handled from the transformer which originally served the one customer beyond the city limits. He contended that the situation would then present two alternatives: (1) installation of a larger transformer within the city to supply service to the entire group from the city secondaries with billing under urban rates, or (2) installation of a transformer outside the city limits to serve the cluster of customers with the rural rate applying to such service but

with those customers outside the city who originally received service at urban rates thereafter billed at the rural rate.

We consider the example given by the witness a misinterpretation of the definition of rural customers. The fact that the group could be adequately served if increased transformer capacity were installed within the city means that the urban rate should apply. The basis of the definition is whether adequate service *can* be supplied and not whether such service *is* supplied from urban secondaries. The Commission and its staff are available at all times to assist in the interpretation of utility rates and rules when difficulties arise, and such assistance has been furnished to many utilities.

We appreciate that the desire of Two Rivers for the city limits as the basis of classifying urban and rural customers may be inspired by the rule of the near-by Manitowoc municipal electric utility under which rural customers are defined as all customers beyond the city limits. The Manitowoc rule is an exception to a general policy throughout the state and has been permitted to remain in effect because the rule was adopted many years ago. The Manitowoc rule is a part of the provision of service by the Manitowoc municipal utility. Such is not the case at Two Rivers where the present rule has been in effect since about the same time that the first customers outside the city limits were extended service.

Over a period of years it has become accepted practice among the electric utilities operating in Wisconsin to distinguish between urban and rural service on the basis of urban secondaries. This method more nearly approximates the point beyond which a substantial increase in average investment and expense per customer are experienced, and this method places the dividing line on the basis of normal urban characteristics of customer density rather than on the basis of an artificial boundary line which may or may not reflect the extent of territory that is urban in nature. We, therefore, conclude that the present rule and definition concerning urban and rural customers should be maintained by the city of Two Rivers.

[4] On the basis of the evidence in this proceeding, it appears that the rural rate is out of line with urban rates for application to suburban areas. A large investment per rural user has not been required of the Two Rivers utility because of its extension rule providing an investment of three times estimated annual revenue and because the extensions have all been relatively near the urban area. Therefore, a reduction of rural rates to bring them into better ratio with urban rates appears warranted. A differential of 25 per cent between urban and rural rates constitutes a reasonable measure of the average difference in cost of service to urban and to suburban rural customers. We shall, therefore, authorize the city of Two Rivers as a public electric utility to charge rural customers 125 per cent of the urban rate. This can be done simply by figuring consumptions of rural customers at urban rates and adding 25 per cent to the bill.

With this general reduction in rural rates, the ratio between urban and rural rates at Two Rivers will be the ratio that is appropriate between urban and suburban rates. Consequently, the residents of Edgewood Place will receive service at rates only 25 per cent higher than urban rates. We do not consder that the suburban characteristics of the Edgewood Place community and the evidence as to cost of service warrant any greater reduction of rates to customers there than is provided in this order.

Findings

The Commission finds:

1. That present rates of the city of Two Rivers, Manitowoc county, as a public electric utility for service to rural customers are unreasonable.

2. That rates for rural electric service herein ordered, to be equal to 125 per cent of urban rates, are reasonable.

3. That the definition of "rural customer" in rules of the said utility is correct and proper, and such rules are, in that respect, reasonable.

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Willis Ramsey et al.

v.

Edison Light & Power Company

[Complaint Docket No. 11576.]

Reparation, § 39 — Stipulation to settle claims — Commission approval.

1. A stipulation between a public utility and a consumers' league petitioning for reparations, providing for the payment of an additional amount to consumers in full and complete settlement and satisfaction of all reparations, should be approved by the Commission when the additional amount is to be distributed to all consumers, the complainant is the only entity petitioning for reparation, the utility denies liability, an exact determination as to what further liability there might be would require protracted and expensive litigation for both sides, the consumers as a result of rate orders are paying the lowest rates for electric service in the state, and they have already received substantial reparation awards, p. 188.

Contracts, § 6 — Powers of Commission — Effect of stipulation.

2. No agreement between the parties to a reparation proceeding can either bind the Commission to terminate a related proceeding instituted to prevent the dissipation, through dividends, of cash which might be required for reparation payments or prevent the Commission from terminating such case; and the part of a stipulation in the reparation case dealing with the dividend proceeding is therefore meaningless, p. 188.

Dividends, § 6 — Termination of restrictions — Reparation matters.

3. A proceeding instituted by the Commission to prevent the dissipation, through dividends, of cash which might be required for reparation payments in a related proceeding should be terminated when the restriction upon dividend declarations is no longer required because of the termination of the other proceeding upon a stipulation settling the reparation question, p. 188.

(BUCHANAN, Commissioner, dissents.)

[June 1, 1943.]

STIPULATION *between parties for settlement of reparation question; stipulation approved. Order modified June 21, 1943 to provide that payments be completed on or before August 31, 1943.*

By the COMMISSION: This proceeding was initiated during the pendency of our rate complaint against Edison Light and Power Company (C. 11108) [See (1941) 40 PUR (NS) 146; (1942) 42 PUR(NS) 206; (1942) 44 PUR(NS) 275] by a petition for the award of reparations to consumers of that utility's service. As a result of orders issued in the rate case, about $625,000 has been already paid to the consumers in reparations and, in connection with our final order in that case, issued September 21, 1942, respondent is now computing further reparations for the period March 24, 1942, to October 1, 1942, estimated at $28,000. Although the rate case has been closed, the instant proceeding remains open for disposition.

[1–3] The parties to this proceeding have filed of record a stipulation dated February 26, 1943, the substance of which is as follows:

1. That respondent denies liability for any reparations in addition to those already awarded by the Commission.

2. That, nevertheless, in order to close the proceeding, respondent is willing to pay an additional $30,000 to its consumers "in full and complete settlement and satisfaction of all reparations"; this sum to be distributed on the same basis and, if practicable, at the same time, as the $28,000 payment mentioned above.

3. That complainants accept the offer and agree to the termination of this proceeding.

4. That the parties also agree to the closing of C. 12697 [See (1939) 29 PUR(NS) 75; (1941) 41 PUR (NS) 255], which is a proceeding instituted by the Commission against respondent during the pendency of the rate case.

One of the principal purposes of the proceeding at C. 12697—and the only purpose now operative—was to prevent the dissipation, through dividends, of cash which might be required for reparation payments.

We note that the additional $30,000 is to be distributed to all consumers now entitled to participate in the $28,000 payment, irrespective of

whether or not they are members of the Utility Consumers League. On the other hand, complainant is the only entity petitioning for reparations and, from the nature of the proceeding and the position of the respondent that no liability exists for further awards, it is apparent that an exact determination as to what further liability there may be would require protracted and expensive litigation for both sides. Respondent's consumers, as a result of the Commission's rate orders, are now paying the lowest rates for electric service in Pennsylvania, and they have already received substantial reparation awards. For these reasons, we find the stipulation acceptable, in so far as it affects this proceeding.

The dividend Case (C. 12697) *supra,* was instituted by the Commission. No agreement between the parties to another proceeding can either bind the Commission to terminate that case, or prevent it from doing so. The part of the stipulation dealing with the dividend proceeding is therefore meaningless. However, the Commission, upon its own initiative, and for the reason that restriction upon respondent's dividend declarations is no longer required, will terminate that case in a separate but concurrent order; therefore,

Now, to wit, June 1, 1943, it is *ordered:*

1. That the stipulation of record herein, dated February 26, 1943, in so far as it relates to this proceeding, be and is hereby accepted, subject to the condition that the $30,000 therein mentioned be distributed upon the same basis, to the same persons, and at the same time as the reparations now being computed for the period March 24, 1942 to October 1, 1942, and that all such payments be completed on or before July 31, 1943.

2. That, upon compliance by respondent with the condition of paragraph 1, this proceeding shall terminate and the record shall be marked closed.

Commissioner Buchanan files a dissenting opinion.

BUCHANAN, Commissioner, dissenting: The difference between the Commission majority and myself in this matter relates to the interpretation of Mr. Justice Parker's decision in Cheltenham & A. Sewerage Co. v. Public Utility Commission (1942) 344 Pa 366, 43 PUR(NS) 477, 25 A (2d) 334, construing § 313 of the Public Utility Law of 1937. I agree that the supreme court of Pennsylvania in that decision practically rewrote parts of § 313, a legislative act.

The Commission majority, the Utility Consumers League of York, complainant, and Edison Light and Power Company, respondent, apparently are in accord that under that decision there may be no further reparations payable to consumers of Edison Light and Power Company resulting from the final rate reduction of that company at Complaint Docket 11108, Pa. P. U. C. and, therefore, a compromise figure of $30,000 represents that much more of a return to ratepayers than they could possibly get if hearings were held on the complaint. With this opinion likewise I am inclined to agree.

However, the Commission's Law

Bureau seems to be of a different opinion and in collaboration with the Bureau of Accounts have calculated that in spite of the Cheltenham & Abington decision *(supra)*, a sum fifty times greater might be recovered for the patrons of Edison Light and Power Company if the reparations' suit was heard and the decision made on the basis of the known record. The two bureaus seem confident that a greater sum could be recovered than the compromise figure, in any event.

It is my inclination to gamble with that $30,000 for a greater return of the excess payments, which patrons of Edison Light and Power Company of York admittedly have made, on the chance that thereby equal justice under the law might be obtained for the consumer. That inclination would necessitate public hearings, a formal record and a decision by the Commission as to the amount of reparations payable for each year involved. I would adopt that procedure immediately and therefore oppose the majority action.

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Re Frackville Sewerage Company

Public utilities, § 14 — What constitutes — Company which has lost property.

1. A company which, under foreclosure, has been divested of all of its property except its charter and some accounts receivable is not a public utility within the meaning of Art. 1 § 2, subsection 17 of the Public Utility Law, since it neither owns nor operates any equipment or facilities, p. 192.

Definitions — Equipment or facilities — Charter and accounts receivable.

2. A charter and accounts receivable of a company which has lost its other properties through foreclosure are not "equipment or facilities" within the meaning of a statute defining a public utility, p. 192.

Security issues, § 17 — Jurisdiction of Commission — Company no longer a public utility.

3. The Commission has no jurisdiction to entertain a petition filed by bondholders to restrain the delivery of bonds of a company which, by reason of the involuntary divestment of property by foreclosure, is no longer a public utility, p. 192.

(SIGGINS, Chairman, dissents.)

[June 15, 1943.]

PETITION *by bondholders of sewerage company seeking to restrain delivery of bonds; dismissed for lack of jurisdiction.*

By the COMMISSION: This matter comes before the Commission upon petition filed by bondholders of the Frackville Sewerage Company wherein they seek, through the action of the Pennsylvania Public Utility Commission, to restrain the delivery of $15,000 of bonds of the company, to three lawyers, allegedly in payment for services rendered in the past by them, and requesting the Commission to invoke the provisions of the Public Utility Law, particularly Art. VI, relating to the registration of securities and obligations.

The petition sets forth, and the record of the Commission reveals, the following facts:

The Frackville Sewerage Company immediately after its incorporation entered into an agreement with one George A. Haupt, Jr., to purchase all of the sewerage system owned by him and then being operated in the borough of Frackville, in consideration of the issuance to him of $85,000 of the common capital stock of the company and $60,000 bonds of the company, which bonds were to be secured by a first mortgage on all of the property owned by the sewerage company and to be conveyed by said Haupt to the company.

Prior to the purchase of the sewerage system, the company authorized an issue of $145,000 of said bonds and, on April 28, 1933, the company filed with the Commission a certificate of notification indicating, inter alia, that the intent of the company was presently to issue $75,000 of the bonds, of which $60,000 were to be delivered to Haupt as a part of the purchase price and that $15,000 of the total $75,000 was to be held in the treasury of the company pending future disposition thereof.

Pursuant to the corporate action authorizing the bond issue, the officers executed $145,000 in bonds on the first day of May, 1933, which bonds were due and payable on May 1, 1953, at the Miners National Bank, Pottsville, Pennsylvania, and at the same time executed the first mortgage upon all the property appertaining to said sewerage system, and delivered the same together with the $145,000 in bonds to the said bank as trustee. The bank thereafter delivered $60,000 in bonds to Haupt under the agreement.

The board of directors of the company had voted, at a subsequent meeting in 1938, to deliver the $15,000 of bonds as provided in said mortgage into the treasury of the company for use of the company for operating expenses and other proper needs of the company. No securities certificate for delivery of $15,000 in bonds has been filed with this Commission under § 601 of the Public Utility Law of 1937.

In addition to the above, the petition discloses also; that the company defaulted in the payment of the interest on the bonds, foreclosure took place in 1938 under the mortgage, and ultimately all the assets (except the charter and some accounts receivable) of the company were sold at public auction and were acquired at said auction by the borough of Frackville, Schuylkill county, Pennsylvania, for the sum of $52,350; that the net proceeds of the sale ($50,000) are in the hands of the Miners National Bank, Pottsville, Pennsylvania, and are

available for distribution to the holders of the outstanding bonds which have been legally issued.

Such are the facts before us.

[1–3] As we have indicated, the petitioners seek, through the action of the Pennsylvania Public Utility Commission, to restrain the delivery to three attorneys of the $15,000 of bonds for legal services, and request the Commission to invoke the provisions of the Public Utility Law, particularly Art. VI, relating to the registration of securities. Section 601 thereof relates to the registration of securities *by* every *public utility*, and § 604, in effect, authorizes the Commission to declare void any securities issued in violation of the article.

Article I, § 2, subsection 17 of the Public Utility Law defines a "public utility" as follows:

" 'Public utility' means persons or corporations now or hereafter owning or operating in this commonwealth equipment, or facilities for. . . ."

It is to be noted that under the section a public utility must *own or operate equipment or facilities* used in rendering any of the designated services. The company *neither* owns *nor* operates any equipment or facilities. It was divested of them involuntarily by foreclosure. It has only a charter and some accounts receivable. They are not "equipment or facilities."

"Facilities" as defined in § 2, subsection 10, is as follows:

" 'Facilities' means all the plant and equipment of a public utility . . . owned, operated, leased, licensed, used, controlled, furnished, or supplied for, by, or in connection with, the business of any public utility: . . ."

The company has no business whatsoever.

Section 2, subsection 10, is a substantial reënactment of the term "facilities" as was contained in § 1 of the Public Service Company Law. Under that section it has been held in New Street Bridge Co. v. Public Service Commission, 271 Pa 19, PUR 1922A 404, 114 Atl 378, that the term "facility" cannot be applied to passive lessor companies. A street railway that has leased all its property does not come under the jurisdiction of the Commission: Swarthmore v. Philadelphia, M. & S. Street R. Co. PUR 1921E 252. A fortiori, as to companies who do not have anything to lease.

It is our opinion that the Frackville Sewerage Company is not now a public utility as defined in the Public Utility Law (Act May 28, 1937, P. L. 1053) and we must conclude that the Commission is without jurisdiction to entertain the petition; Therefore,

Now, to wit, June 15, 1943, the prayers of the petition are denied and the petition is dismissed for lack of jurisdiction.

Chairman Siggins voted in the negative.

Here are the facts for you to know about Kuhlman Saf-T-Kuhl Transformers

SAFETY: Kuhlman SAF-T-KUHL Transformers are filled with a non-inflammable, non-explosive, inert cooling fluid and are thus 100% safe.

WHERE TO USE: Kuhlman SAF-T-KUHL Transformers are designed for manufacturing plants wishing to modernize or expand their plant capacity or facilities. Kuhlman SAF-T-KUHL Transformers make it possible to divide existing electrical circuits into several sections in considerably less time and at less cost, than is possible with the usual type of transformer which requires vaults.

INSTALLATION: SAF-T-KUHLS can be installed at the

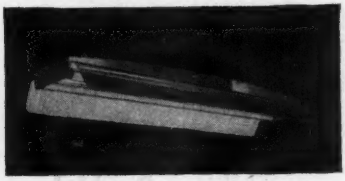
Industrial Progress

Selected information about products, supplies and services offered by manufacturers. Also announcements of new literature and changes in personnel.

Equipment Notes

Super-Illuminator Manufactured by Guth

Strength by method-in-design, features the new Super-Illuminator, manufactured by Edwin F. Guth Company, 2615 Washington Avenue, St. Louis, Mo. To compensate for W.P.B. steel limitations, Guth engineers have developed a die-formed one-piece full channel, with unique metal "bends" (patents applied for) that provide greater channel-strength on the horizontal and on the torque, according to a recent company report.



Guth's Super-Illuminator

The new Super-Illuminator is available in sizes for 2-40, 3-40, and 2-100 watt fluorescent lamps and all wiring and auxiliaries are fully enclosed. Positive "flexible trigger" supports allow quick, easy reflector removal. Starter switches are accessible without removing lamps, and bump-proof end-plates give added lampholder protection.

New Pipe Joint Compound Announced

X-Pando Corporation, 43-15 36th Street, Long Island City, New York, announces the perfection of X-Pando Pipe Joint Compound, a cement which expands as it sets, ending pipe leaks. The expansion of the pipe joint compound corrects imperfection in threads and smooths flange faces, the company claims. Yet joints sealed with X-Pando Pipe Joint Compound can be readily taken apart.

Comparatively new in the oil and gas industry X-Pando Pipe Joint Compound has been known for many years as the standard compound in American industry, according to the manufacturer. It is supplied in one formula only, and will hold anything carried in metal pipes except certain heavy acids. It withstands deflection, sharp temperature changes and vibration and pressure. It may be used on all types of joints and for all joint sealing purposes.

Thread-Tool Grinding Fixture Announced By R. H. Clark Company

A new thread-tool grinding fixture for grinding both 60° and 29° threading tool bits with extreme precision is announced by Robert H. Clark Company of Los Angeles, manufacturers of Clark cutting tools.

According to the manufacturer the new fixture has no graduated scales or moving parts. The machinist merely slides the bit into the holder, tightens a setscrew, and places the fixture on the grinder work table, properly positioned for the thread angle desired as indicated on the fixture. This automatically holds the bit securely and precisely at the desired angle to the grinding wheel.

Experienced machinists and tool grinders, the manufacturer reports, will find that this fixture saves time and eliminates waste caused by grinding inaccuracies, and even inexperienced shop help can do a quick, accurate, and finished job of thread tool bit grinding when using it.

The new fixture is available in two standard sizes, each of which takes all tool bits within a $\frac{1}{2}$ in. to $\frac{5}{8}$ in. range. One model is designed for the mechanic's tool kit; the second performs exactly the same work but is a heavy-duty shop model.

Full information, specifications, and prices may be obtained from the company, 3424 Sunset Boulevard, Los Angeles 26, Calif.

New Portable Metal-Coating Process Available

Rapid Electroplating Process, Inc., 1414 S. Wabash Ave., Chicago 5, Ill., announces the development of a "rapid metal-coating process."

By the use of this process the application of the heavier silver coatings now specified on many government projects, for bus bars, lugs and other parts of electrical equipment is expedited. It may also be used for plating, replating or touching up rust and corrosion resistant coatings of other metals, on production lines or in the field, and is available in silver, cadmium, tin, copper, zinc, nickel and gold.

According to the manufacturer it can be used anywhere, and is quick and positive in operation. Only three basic items are required: (1) Rapid Electrolyte; (2) Rapid Metal Cleaner; (3) Rapid Applicator. Plating current for small jobs can be obtained from dry batteries, storage battery or any convenient source sup-

plying direct current 3 to 6 volts. The rapid plating rectifier is recommended for large quantities of work. Standard applicators are available in three sizes. Special applicators can be made to order to facilitate work in very close quarters, or for special requirements on production lines.

The rapid plating rectifier can be connected to any 110-120 volt, 50-60 cycle a.c. circuit, and will supply current for up to three applicators, or, operators.

New Type Fluorescent Lamp Ballast

The Acme Electric & Manufacturing Co., Cuba, New York, announces the manufacture of "new air-cooled type Acme Fluorescent Lamp Ballasts," which were designed for exposed mounting on fluorescent lamp fixtures. According to the company these ballasts will operate at lower ambient temperatures than enclosed type ballasts.

Catalogs and Bulletins

Booklet Designed to Aid Dictaphone Users

The Dictaphone Corporation, manufacturers and distributors of "Dictaphone" dictating machines and accessories, announces the publication of a new booklet designed to acquaint every Dictaphone user with all the different uses to which this dictating machine can be put.

Entitled "Let the Dictaphone Do It!" this booklet contains a special section of particular help to those who may be using the Dictaphone for the first time—and a number of suggestions to old users.

Copies of the publication may be obtained from the company, 420 Lexington Avenue, New York, N. Y.

New Ideal Handbook

Ideal Commutator Dresser Co., Sycamore, Ill., has issued a new maintenance handbook which tells how to keep motors and generators operating continuously at peak efficiency without dismantling.

Other Ideal equipment also illustrated and described in this 88-page booklet include: industrial electrical equipment, variable speed transmissions, machine tool accessories, wiring devices and tools, and rechargeable battery for flashlights.

G-E Announces New Publications

A new General Electric publication (GET-1173) "Electric Instruments—Principles of Operation," presents a brief discussion of the characteristics of instruments, what makes them operate, and the individual limitations of the various types. Copies are available on request to the company at Schenectady, N. Y.

A 24-page nontechnical book titled "How Electronic Tubes Work" has been produced by the General Electric Electronics Department at Schenectady, N. Y. It is designed primarily for industrial engineers. Illustrated with 117 sketches and photographs, the book

Catalogs & Bulletins (Cont'd)

is a primer whose main emphasis is on how the electronic tube operates. The eight basic types of industrial electronic tubes and their uses are described. The book (GEA-4116) is available free on request to Dept. 6-215, Publicity Divisions, General Electric Company, Schenectady, N. Y.

Manufacturers' Notes

F. O. Clukies Joins Robins

Francis O. Clukies has joined the sales staff of Robins Conveyors Inc., Passaic, N. J., engineers, manufacturers and erectors of materials handling machinery.

Mr. Clukies will specialize in products of the Mead-Morrison Division. He was with the Mead-Morrison Mfg. Co. for some 30 years before Robins bought out the materials handling end of that company. In the interim, he was in business for himself. He will work out of the New York office of Robins.

Chevrolet Dealers Set All-time Service Record

In the first six months of 1943, Chevrolet dealers continued to set new all-time records in servicing the nation's cars and trucks, according to William E. Holler, general sales manager, Chevrolet Motor Division of General Motors. Customer labor volume in the first half of this year was the largest in Chevrolet dealers' history and showed an 11 per cent increase over the first six months of 1942.

"Good Neighbor" Policy in Operation At Marmon-Herrington Tank School

Through arrangements made by the State and War Departments, groups of soldiers from Mexico, Cuba, Ecuador, China, Iran, and the Netherlands Indies, as well as soldiers from the U. S. Army, have taken the course of instruction at the tank school, conducted by the Marmon-Herrington Company, Inc., Indianapolis, Indiana. The school offers instruction on the assembly, operation, and maintenance of tanks.

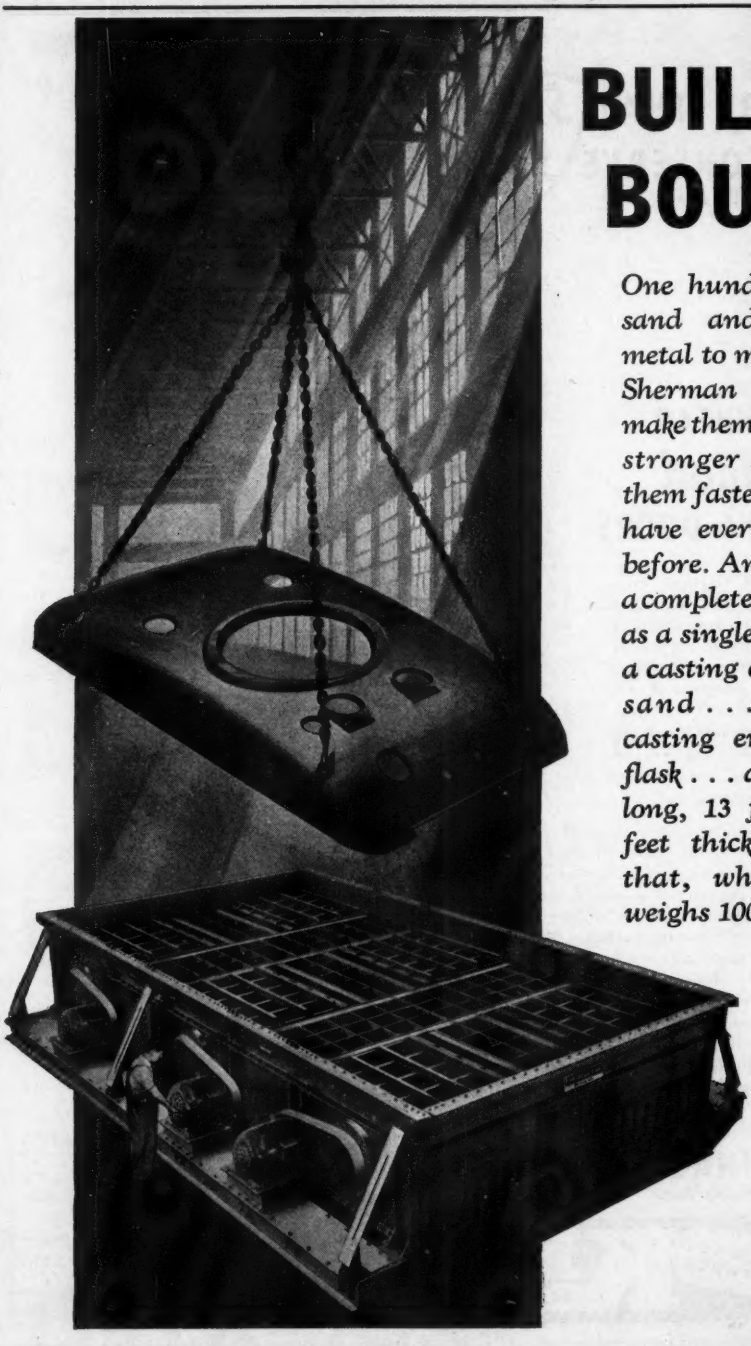
The school, operated under the direction of Marmon-Herrington Public Relations Division, is in direct charge of ex-sergeant Charles T. Biggs, chief instructor. Mr. Biggs attended the United States Army Armored Force School at Ft. Knox, Kentucky, and several other Army service schools.

Stuart Heads Westinghouse Lamp Division

Appointment of Ralph C. Stuart as manager of the lamp division of the Westinghouse Electric & Mfg. Company, with headquarters in Bloomfield, N. J., was recently announced by George H. Bucher, president of Westinghouse.

Mr. Stuart, who has been with the Westinghouse Electric & Mfg. Company and the Canadian Westinghouse Company for twenty-

(*Continued on page 42*)



BUILT TO BOUNCE

One hundred tons of sand and metal . . . metal to make General Sherman tanks . . . to make them heavier and stronger . . . to make them faster than tanks have ever been made before. An entire hull, a complete turret made as a single casting . . . a casting embedded in sand . . . sand and casting encased in a flask . . . a flask 25 feet long, 13 feet wide, 4 feet thick . . . a flask that, when loaded, weighs 100 tons.

Manufacturers' Notes (Cont'd)

five years, will have charge of all activities of the lamp division, including sales, illumination engineering, district office activities of the lamp division, as well as manufacturing and engineering in the division's five plants in New Jersey and West Virginia.

Bourland Appointed Head Lighting Safety Bureau

Appointment of Hal M. Bourland, of Columbus, Ohio, as secretary of the Street and Highway Lighting Safety Bureau, was announced recently by A. F. Dickerson, chairman of the executive committee. Succeeding Alleyn H. Beamish, who is now with the Tax Foundation, he will direct activities of the bureau from New York.

Long identified with public relations, particularly in the field of traffic safety engineering, Mr. Bourland's experience has included legislative, association and publicity work.

The bureau's program continues along the same lines that have marked its operation since it was organized several years ago, according to Chairman Dickerson. The immediate emphasis is on the importance of street and highway lighting as a major safety measure, particularly in the reduction of "off-the-job" accidents, and the need for timely planning to assure the more general application of modern street and highway safety lighting standards at the conclusion of the war.

Synthetic Rubber in the Field of Fabrics

In addition to many types of thin sheeting which can be manufactured from synthetic rubber alone, it also has many uses in combination with woven materials—to strengthen, to increase wear, to water-proof and oil-proof these fabrics, according to the Hycar Chemical Company.

The practical and successful application of hycar synthetic rubber to all types of woven materials, and for many different purposes, varying from industrial diaphragms and conveyor belts to artificial leather and clothing, offers, according to the manufacturer, one of the more realistic reasons for synthetic rub-

Manufacturers' Notes (Cont'd)

ber's superiority over natural rubber and assures its permanent place in our future program. The Akron company is jointly owned by B. F. Goodrich and Phillips Petroleum and is the largest independent producer of butadiene synthetic rubber in the country.

Sylvania Electric Products Acquires Another Plant

Sylvania Electric Products Inc. announces the acquisition of its fifteenth manufacturing plant, a steel and brick structure in Warren, Pa., which after conversion will be devoted to the production of assembly parts for radio tube, lighting and electronic products.

U. S. Rubber to Increase Asbestos Fabric Output

United States Rubber Company will increase by 50 per cent its capacity for the production of asbestos fabrics used principally in war products, it was announced recently by Herbert E. Smith, president.

The material is used in the manufacture of fire-fighting suits for the Army and Navy Air Forces, air ducts for both the heating and deicing of bombers and fighter planes, insulating tape for naval cable and electrical apparatus, and other products vital to the war effort.

Many new and unusual applications for this new type of asbestos textile are anticipated by the company in the postwar market.

Army and Navy Honor Taylor Instrument Companies

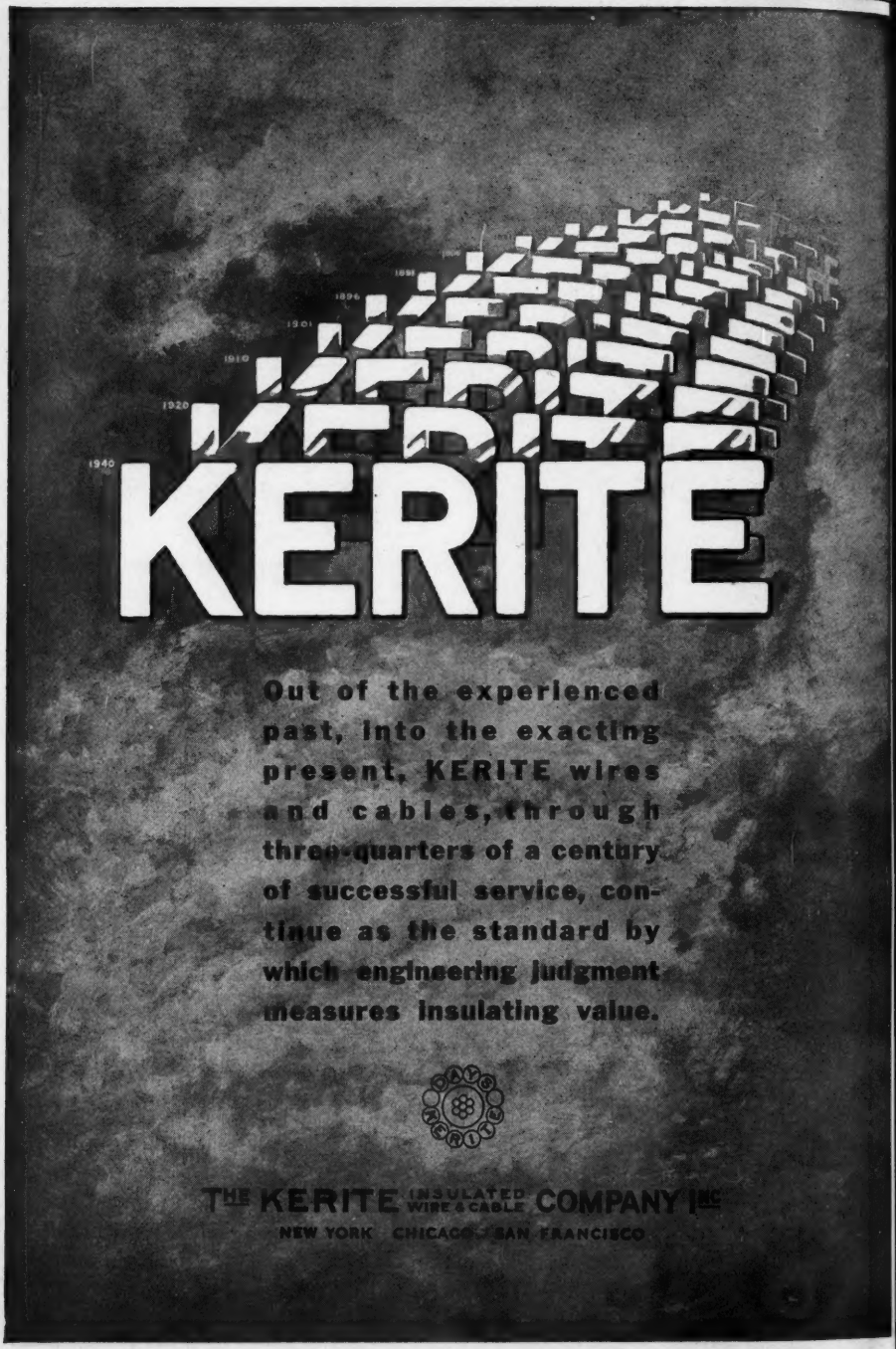
The Taylor Instrument Companies, Rochester, N. Y., have recently been awarded the Army and Navy "E" for "accomplishing more than once seemed reasonable or possible"—in the words of Undersecretary of War Patterson.

Blaw-Knox Man War Bond Winner

C. S. Park, acting works manager of Blaw-Knox Company, Martins Ferry, Ohio, won first place in Metallizing Engineering Company's Third Conservation Contest for the most outstanding examples of machinery maintenance or parts salvage with the metallizing process. The prize, which was a $250 War Bond, was awarded Mr. Park for contributing a procedure which eliminates scrapping of mis-machined parts for anti-aircraft guns.

R M A Export Committee Headed by Coogan

Walter A. Coogan, director of the international division of Sylvania Electric Products Inc., has been reappointed chairman of the export committee of the Radio Manufacturers Association for the coming year.



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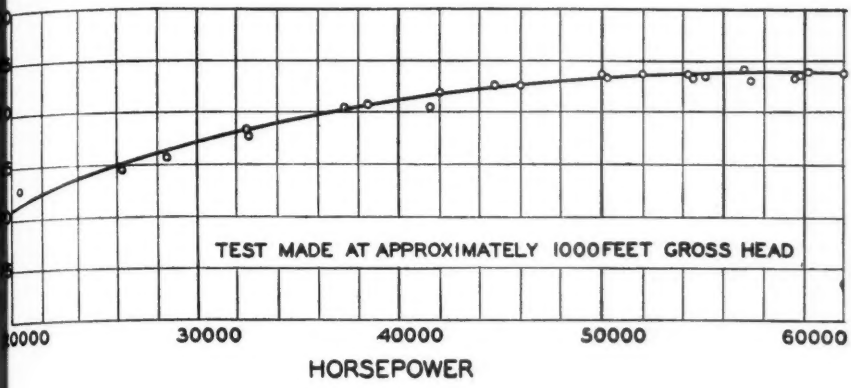

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Newport News Shipbuilding and Dry Dock Company

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Newport News, Virginia

Our facilities for building turbines, valves, rack rakes, gates, etc., are now in use for constructing ships for the Navy.